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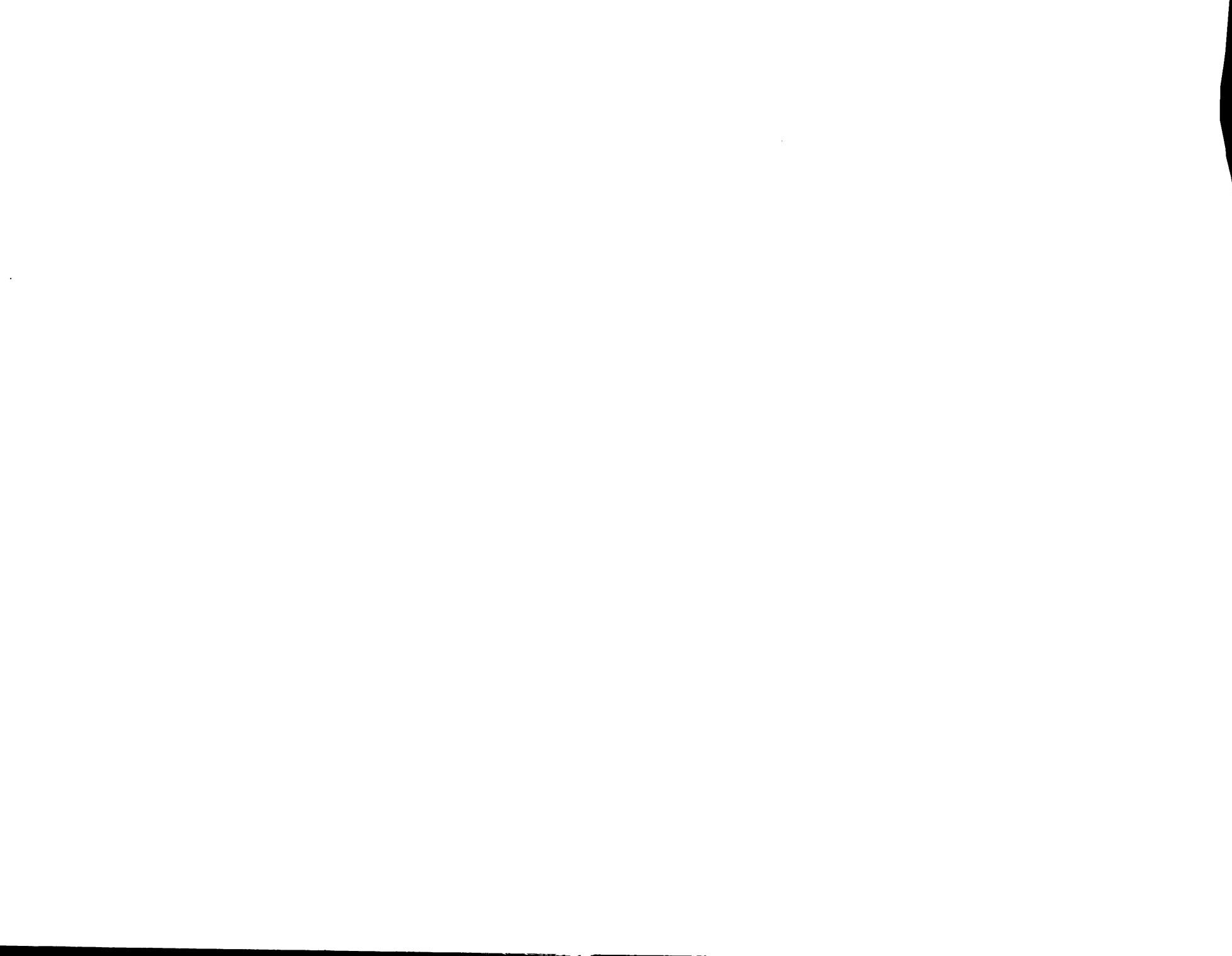
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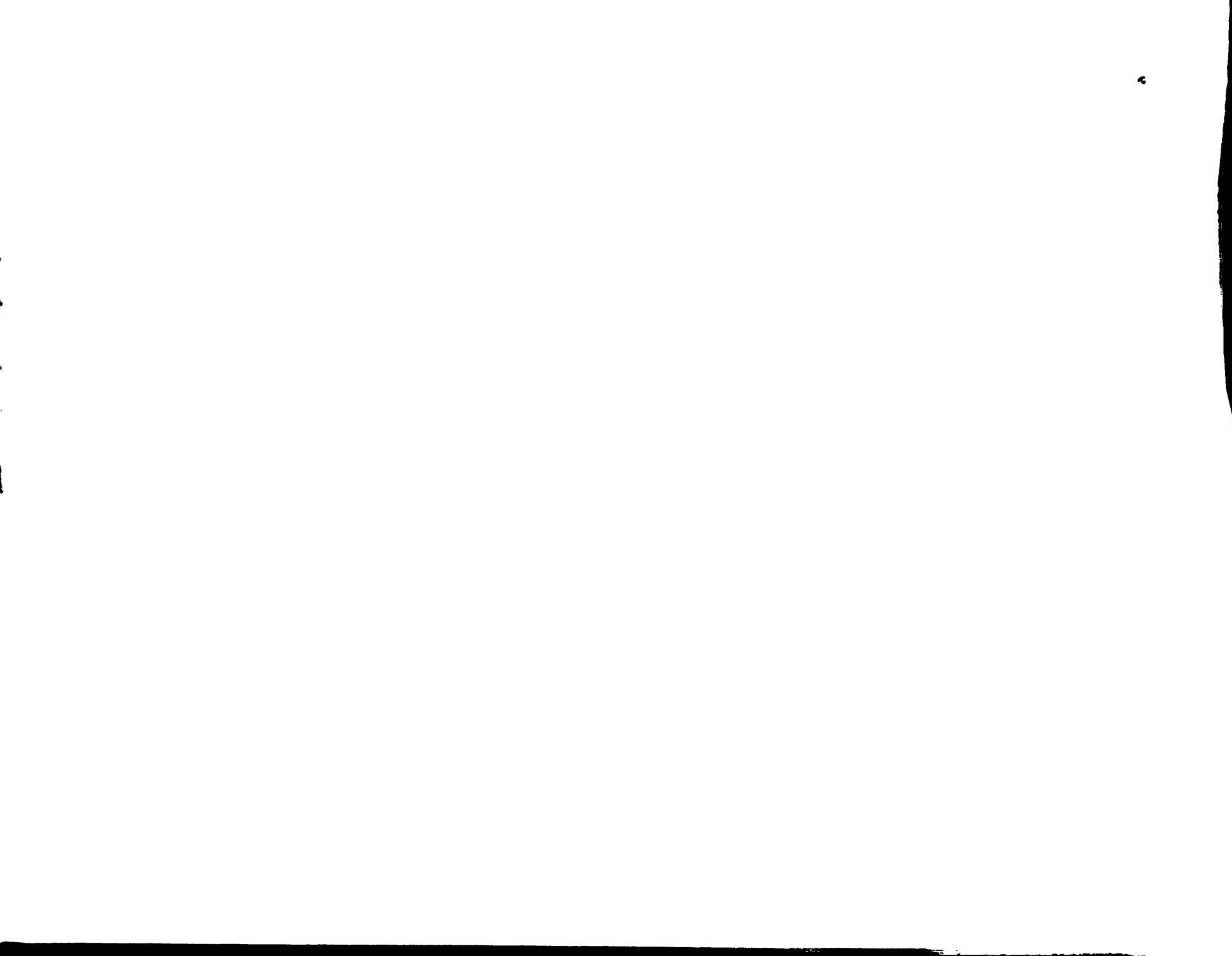
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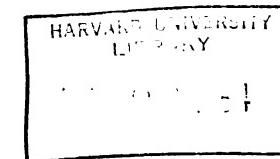
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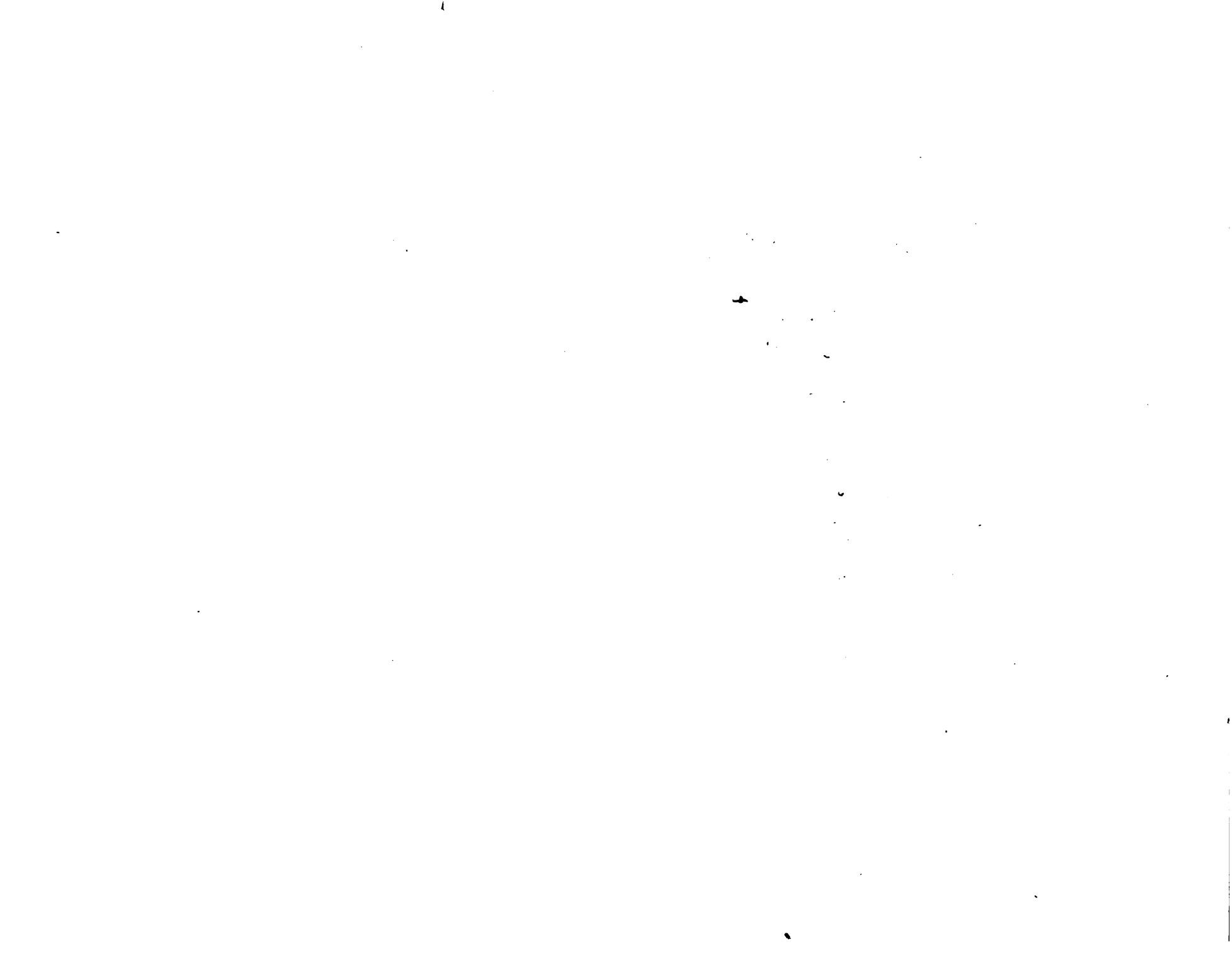
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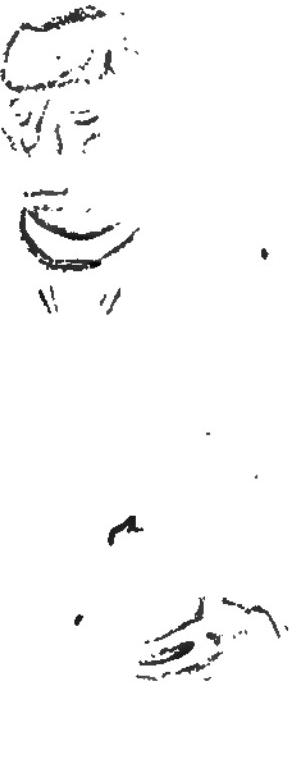
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VOLUME V.

TRANSACTIONS

1897-1898

BOSTON
PUBLISHED BY THE SOCIETY
1902



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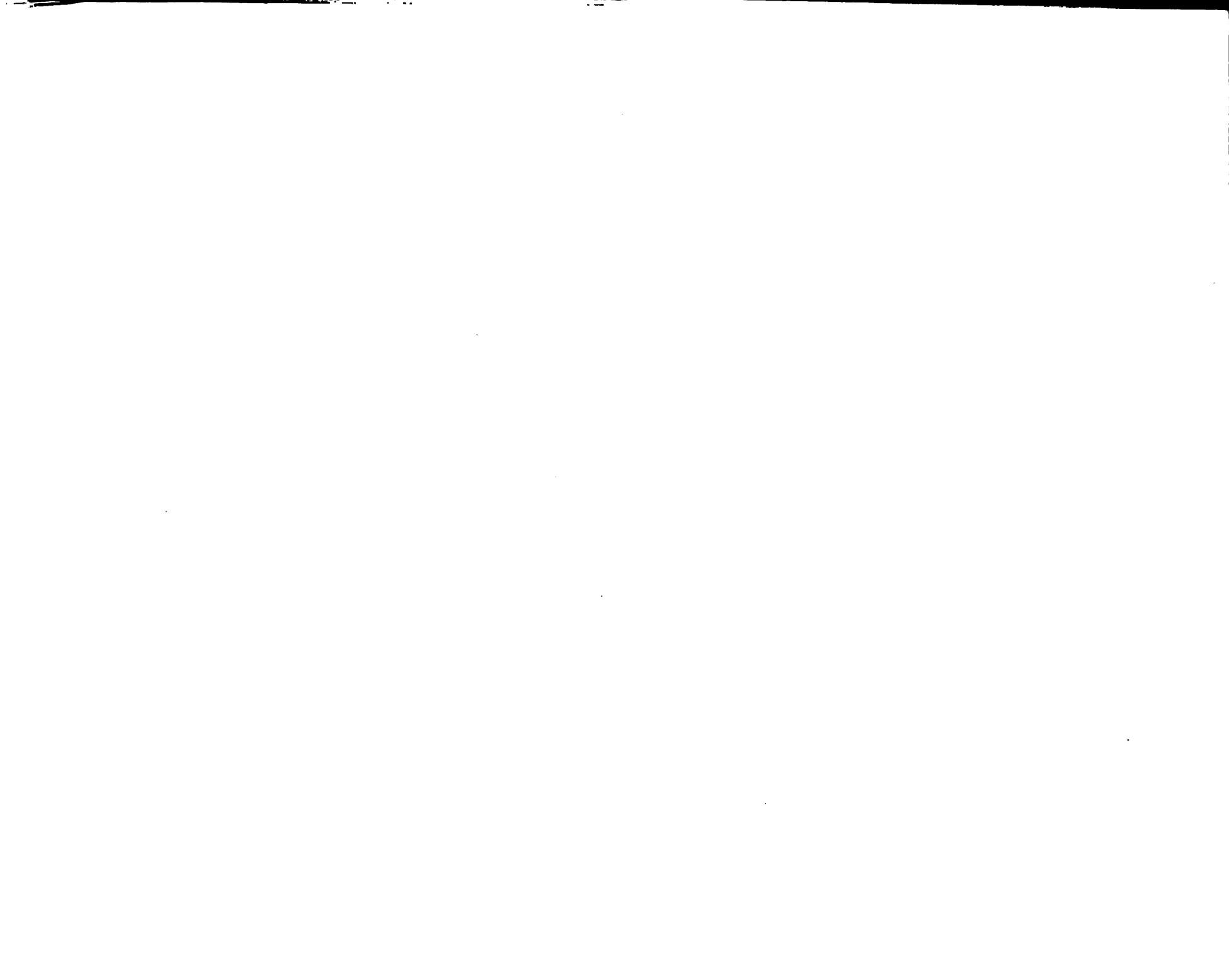
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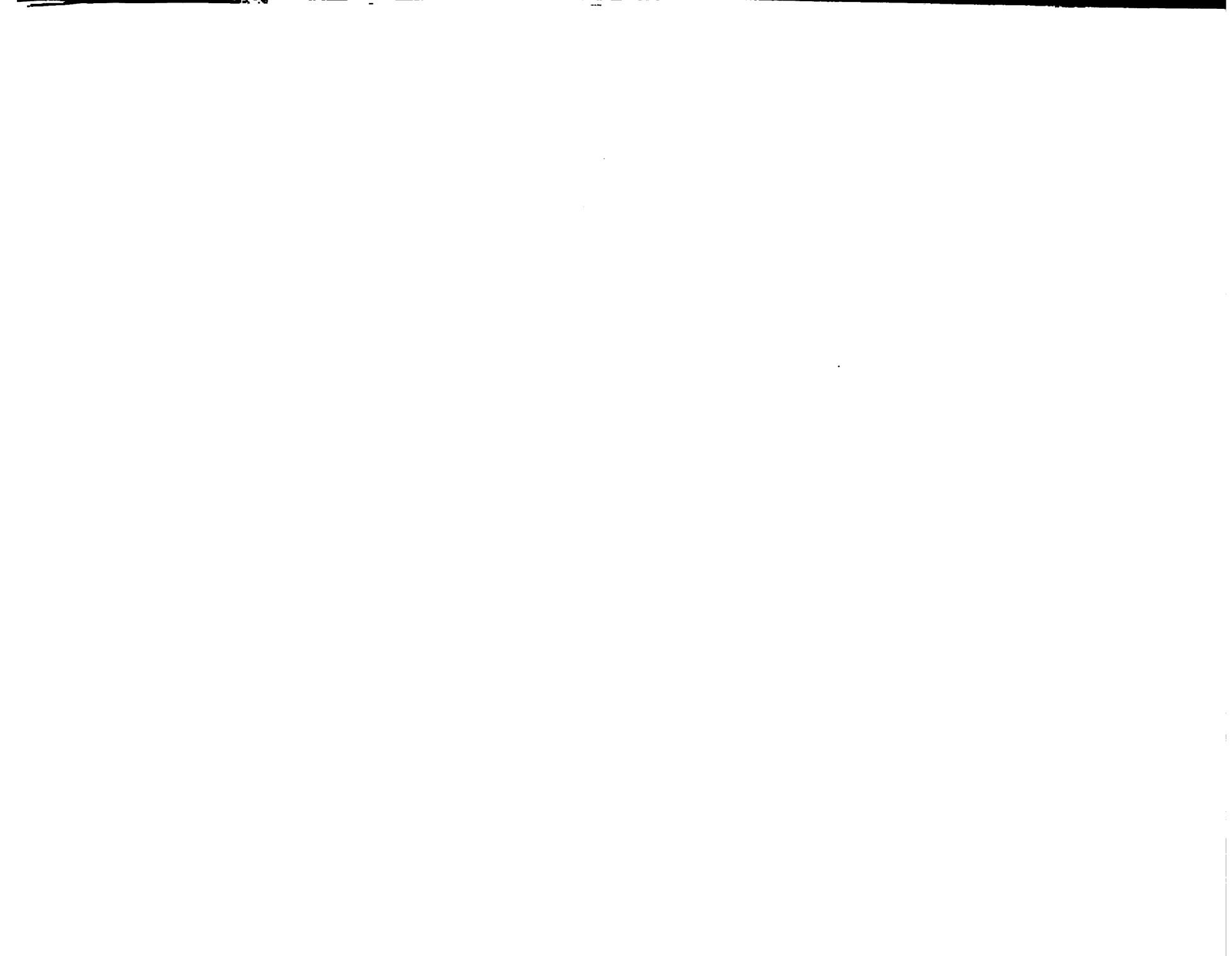
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PREFACE.

THE Transactions of the Society at eight of its Stated Meetings are recorded in this book, in continuation of a similar record in Volume III.

Volume IV. will be a volume of Collections, in which will appear several communications that were too long to find an appropriate place in the Transactions. Considerable progress has been made upon it, about one hundred pages being already in plate.

Among the more important communications printed in the volume now offered to the Society are (1) the Harvard Theses of 1663, with a Note in which Mr. WILLIAMSON interprets the mysterious letters used in the Dedication of the Harvard Commencement programme prior to 1781, (2) a Fragment of the House Journal of 1649, with the learned Notes and observations thereon by Mr. UPHAM and Mr. GOODELL, (3) Mr. MATTHEWS's essay on Hired Man and Help, (4) Mr. SLADE's paper on Henry Pelham, (5) Mr. EDES's paper on John Davis of York and his Thanksgiving Proclamation of 1681, (6) Franklin's letter condemning the doings of the Boston Tea Party, and (7) the Commission of George I. to the Bishop of London in 1726-27, authorizing him to exercise certain episcopal functions in America. Mr. GAY shows that the portrait of Sir William Pepperrell, by an unknown artist, long in the possession of the Essex Institute, was painted by Smibert; and there are also papers concerning the disbursement of the funds for printing Eliot's Indian Bible.



In the following pages will also be found tributes to the memory of Professor LANE, Judge LOWELL, the Hon. GEORGE SILSbee HALE, Mr. FRANCIS VERGNIES BALCH, and the Rev. Dr. JOSEPH HENRY ALLEN; and Memoirs of the Hon. DARWIN ERASTUS WARE, by James Bradley Thayer, of Governor RUSSELL, by Charles Carroll Everett, and of the Hon. LEVERETT SALTONSTALL, by the Hon. Joseph Hodges Choate, one of our Honorary Members.

At the meeting in January, 1898, an amendment to the By-Laws was adopted authorizing the election of a limited number of Corresponding Members. The Society is already much indebted to two members of this class,—Judge WILLIAMSON and the Hon. JAMES PHINNEY BAXTER,—for valuable aid in identifying for the Index many Indian, and other, names and localities in Maine.

In the proceedings of the Meeting in April, 1898, will be found the Report of the Committee which raised the Gould Memorial Fund of ten thousand dollars,—an endowment which will keep in perpetual remembrance the services and virtues of our first President.

The illustrations of this book, comprising four portraits and six fac-similes of rare early documents, have all been engraved by Mr. Elson expressly for the Society, and some of them at the expense of individual members and friends.

The Index has been made with great care, and it is hoped that the efforts of the Committee to make it full and accurate and a perfect key to the text have been successful.

For the Committee,

JOHN NOBLE.

Boston, 21 October, 1892.

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of
The Colonial Society of Massachusetts.

ELECTED 21 NOVEMBER, 1901.

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* Mr. Thayer died 14 February, 1902.

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of Transactions, with the Date of Death.

Resident.

Rev. EDWARD GRIFFIN PORTER, A.M.	5 February,	1900.
Hon. WILLIAM CROWNINGSHIELD ENDICOTT, LL.D.	6 May,	1900.
EDWARD WHEELWRIGHT, A.M.	9 May,	1900.
AUGUSTUS LOWELL, A.M.	22 June,	1900.
JOHN ELDRIDGE HUDSON, LL.B.	1 October,	1900.
Rev. CHARLES CARROLL EVERETT, LL.D.	16 October,	1900.
Hon. ROGER WOLCOTT, LL.D.	21 December,	1900.
HENRY WILLIAMS, A.B.	5 March,	1901.
ROBERT NOXON TOPPAK, A.M.	10 May,	1901.
EDWARD WILLIAM HOOPER, LL.D.	25 June,	1901.
JOHN CHESTER INCHES, Esq.	26 September,	1901.
JAMES BRADSTREET GREENOUGH, A.B.	11 October,	1901.
JAMES BRADLEY THAYER, LL.D.	14 February,	1902.
CHARLES GREENE LORING, A.M.	18 August,	1902.

Postscript.

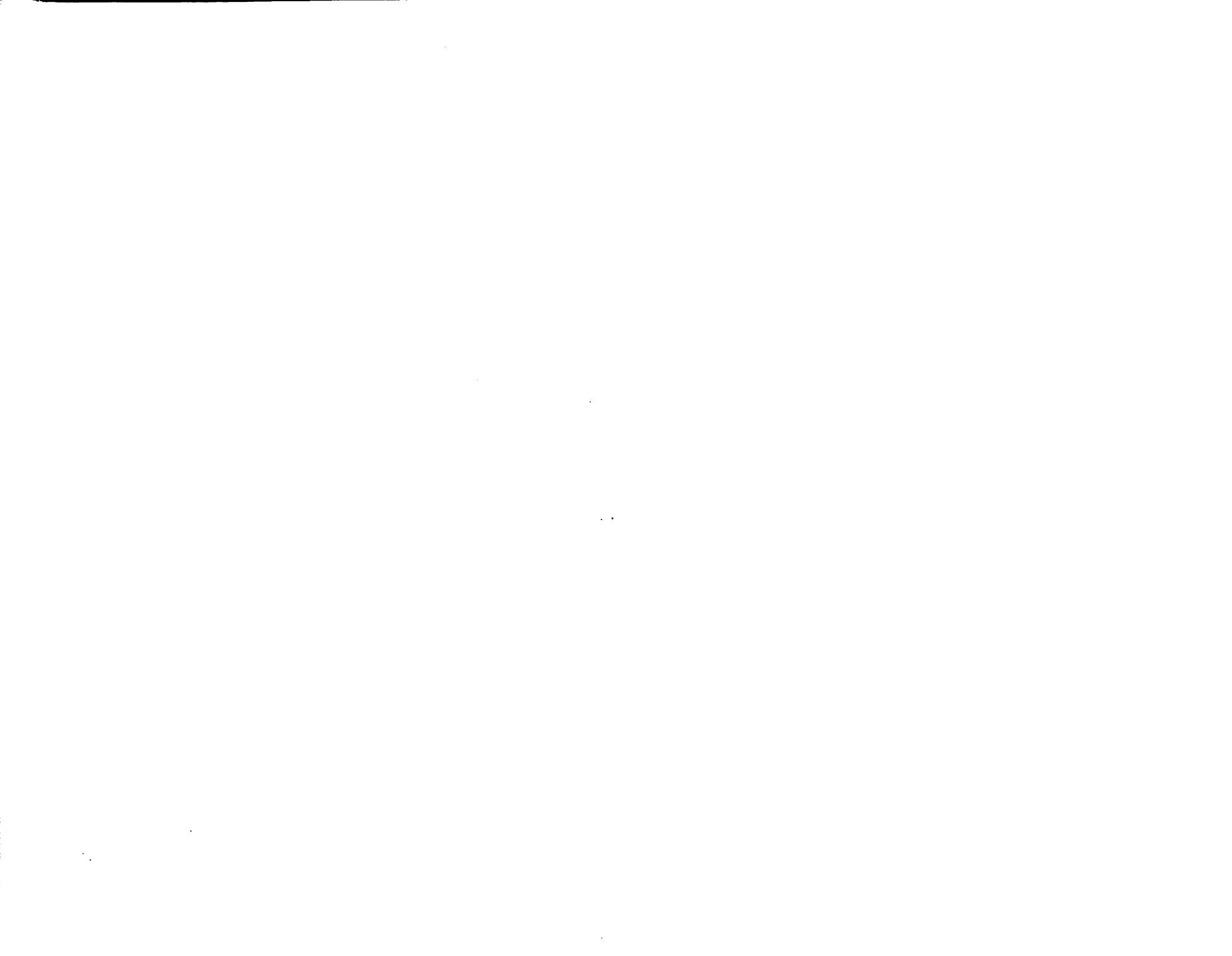
Hon. EDWARD JOHN PHELPS, LL.D. 9 March, 1900.

Corresponding.

Hon. JOHN HOWLAND RICKETSON, A.M.	20 July,	1900.
Moses COOT TYLER, LL.D.	28 December,	1900.
HERBERT BAXTER ADAMS, LL.D.	30 July,	1901.
Benjamin FRANKLIN STEVENS, L.H.D.	6 March,	1902.

TRANSACTIONS

1897, 1898



TRANSACTIONS

OF

THE COLONIAL SOCIETY OF MASSACHUSETTS.

ANNUAL MEETING, NOVEMBER, 1897.

THE ANNUAL MEETING was held at the Algonquin Club, No. 217 Commonwealth Avenue, Boston, on Monday, 22 November, 1897, at half-past five o'clock in the afternoon, the President, EDWARD WHEELWRIGHT, in the chair.

After the Records of the last Stated Meeting had been read and approved, the PRESIDENT addressed the Society as follows:—

Gentlemen of The Colonial Society of Massachusetts,

I have the honor to welcome you to the Fifth Annual Meeting of the Society and to congratulate you upon its continued activity and prosperity, as shown in the Reports of the Council and of the Treasurer.

Yet in one respect the past year has been one of severe trial. We have lost by death no less than seven of our members, including the ripe scholar, eminent man of science, courteous gentleman, whose place, as your President, I now occupy, but cannot hope to fill. Of these seven deaths three have taken place during the summer recess, namely, those of the Hon. John Lowell, Professor George Martin Lane, and the Hon. George Silsbee Hale.

It has been customary at the next Meeting after the decease of a member to give an opportunity to those desiring to do so to

pay tribute to his memory, in anticipation of the formal Memoir. In the case of the three gentlemen named there has been no meeting of the Society, since their decease, until now. The pressure of the usual routine business at the Annual Meeting will not allow time for extended remarks, but I shall ask your permission to say a few words of each of them, leaving it to others to speak more at length at the Meeting in December.

The Hon. JOHN LOWELL, LL.D., died 14 May, 1897. Born in Boston, 14 October, 1824, he graduated at Harvard College in 1843. As his contemporary in College, though not in his Class but in the one next below it, I had the pleasure of knowing him somewhat intimately in our undergraduate days. He had already those charming traits of character which made him, through life, beloved as well as honored by all who knew him. At my initiation into the Hasty Pudding Club he was one of the chief actors in the ceremony, which was marked by some comical deviations from the usual course of proceedings. It was to me a pleasing coincidence that it was he who presided at the Meeting of this Society at which I was inducted into the office of President. There was nothing comical about the latter ceremony, unless it were the choice of candidate for the honor, and for that Judge Lowell was largely responsible, since he presided at the meeting of the Council at which the selection was made.

It is needless to recapitulate here and now all the steps of Judge Lowell's career as a lawyer and a magistrate. It will be sufficient to remind you that from 1865 to 1884, a period of nineteen years, he held consecutively the positions of Judge of the United States District Court of Massachusetts and of the United States Circuit Court for the first circuit, offices to which his great-grandfather, also named John Lowell, had been consecutively appointed by Presidents Washington and John Adams. It was well stated in the printed report of a Dinner given to him on his resignation of the last-named position, in 1884, that "during the nearly twenty years in which he had been on the Bench, his decisions had acquired for him a national reputation and placed him in the front rank of American jurists."

Judge Lowell's connection with this Society dates from its very beginning. He was one of its Founders, his name being the second in the list of members in the Act of Incorporation. At the Meet-

1897.]

REMARKS BY THE PRESIDENT.

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ing for organization, 27 December, 1892, he was chosen one of the two Vice-Presidents of the Society and he continued to hold the office until his death. He was a frequent and interested attendant at our Meetings. At the February Meeting, 1896, he paid a tribute to the memory of our late associate Daniel Denison Slade, and at the Meeting in January, 1897, he performed a similar office for General Francis A. Walker. He had also received and accepted an appointment to write the Memoir of the late Hon. Leverett Saltonstall, which, unfortunately, remained unwritten at his death.

GEORGE MARTIN LANE, LL.D., died 30 June, 1897. He is best known as Professor of the Latin Language and Literature in Harvard College, having held that position from 1851 to 1894, when, on his resignation, after forty-three years of service, he was made Professor Emeritus. In 1893 he was elected a Resident Member of The Colonial Society, at the February Meeting.

My personal acquaintance with Professor Lane was very slight. Years ago I had some correspondence with him in relation to the Latin inscription for the window placed by the Class of 1844 in Memorial Hall at Cambridge. His replies, giving the desired criticism and assistance, were as remarkable for their kindness and courtesy as for their technical knowledge and good taste.

The Hon. GEORGE SILSBEE HALE died 27 July, 1897. He was my classmate in college, but I did not know him very intimately in our undergraduate days. After graduation, since he was Chairman of the Class Committee and I was Class Secretary, we were constantly associated in Class matters, and I came to know and appreciate thoroughly some aspects, at least, of his many-sided and admirable character. He, with his wife, and, at first, some others of the Class, was in the habit of making me a visit of some days, yearly, at my country residence in Cohasset. The last of these visits was made by Mr. and Mrs. Hale, alone, a little more than a month before his death. I had never seen him in apparently better health, or in better spirits, or more genial and entertaining in conversation. I was at the time revising a paper I had written to be read before this Society. He went over it very carefully, pointing out some errors and giving most valuable advice and information in regard to some

legal questions that were involved in my narrative. On the nineteenth of June, we attended the meeting of the Bar called to honor the memory of the late Judge Lowell, little thinking, either of us, that a similar meeting would shortly be held in his own honor.

Mr. Hale, as a lawyer, attained distinction and success. But the Law occupied only a part, and not the largest part, of his busy and useful life. He held important offices in numerous public institutions and was an active member of various historical, scientific, charitable, social, and political associations. An enthusiastic advocate of every cause that commended itself to his judgment, he was constantly called upon to speak and often to preside at public meetings.

One of the clergymen who officiated at Mr. Hale's funeral — the pastor of his youth — said of him, "If ever a young man had purity and aspiration written upon his face, it was he." It may be added that that purity was never sullied, that aspiration was never quenched. He lived a blameless life and was constantly searching for some good thing to do — and then doing it with all his might. Nor were his good works confined to those done as agent for, or in cooperation with, the various institutions or societies with which he was connected. He gave freely of his time, his sympathy and his legal knowledge — often more valuable than mere money — to the friendless and distressed, especially to such of his College classmates or townsmen as were in need of such assistance.

Mr. Hale was elected a Resident Member of this Society at its first Stated Meeting, 18 January, 1893; was one of the speakers at the Annual Dinner, 21 November, 1894; paid a tribute to Leverett Saltonstall at the April Meeting, 1895, and at the same meeting moved a Resolution, which was unanimously adopted, expressing the Society's thorough appreciation of Saltonstall's high qualities. At the February Meeting, 1896, he paid tributes to Martin Brimmer, and to his friend and classmate Dr. Slade. He also wrote for the Society a Memoir of Mr. Brimmer.

The writing of the Memoir of Mr. Hale has been assigned to Mr. Archibald Murray Howe.

At the close of the President's Address Mr. JOHN NOBLE announced that he had in preparation a paper respecting the military movements and expeditions undertaken by the Province during the French Wars. He then read portions of the following paper:—

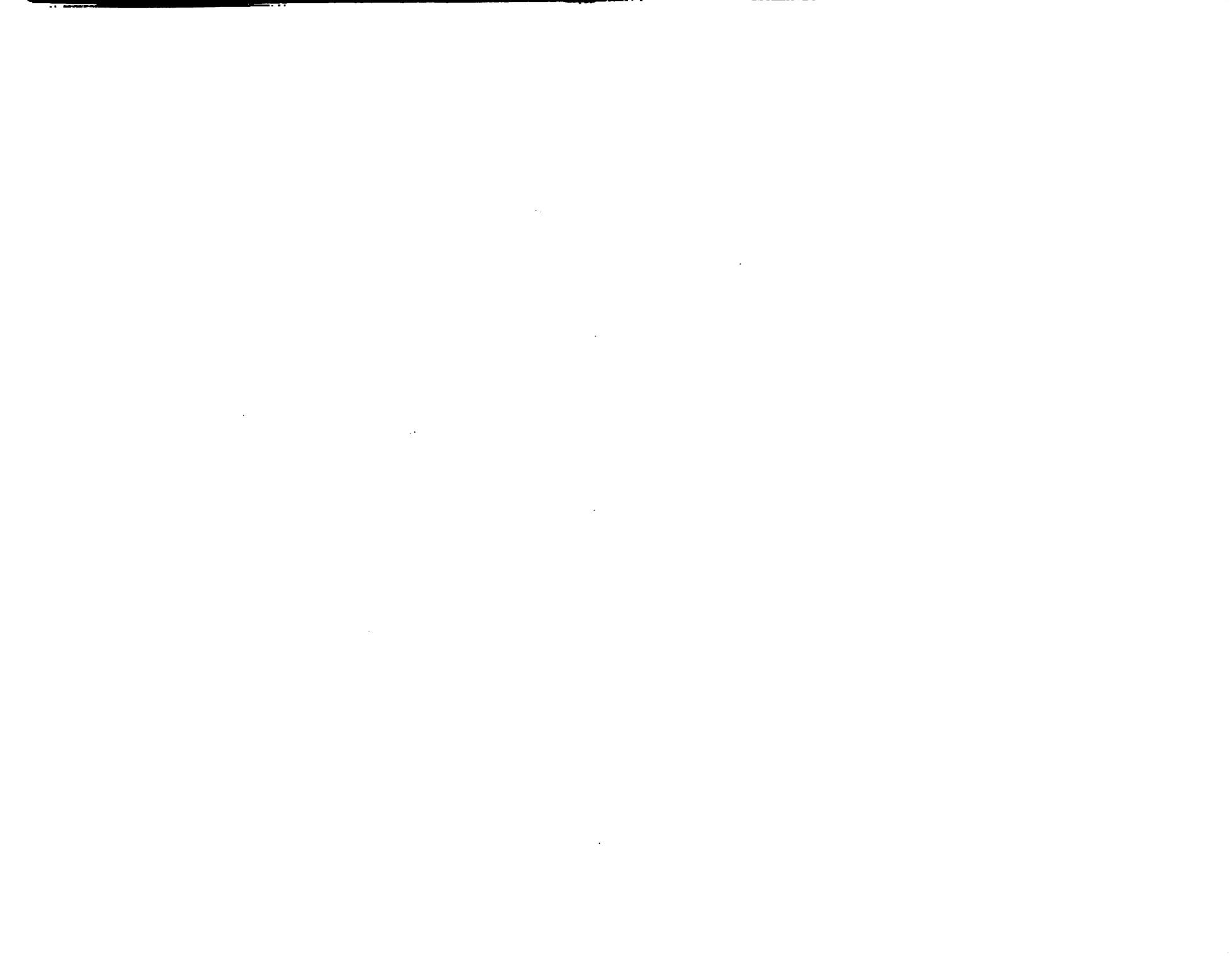
THE RECORDS AND FILES OF THE SUPERIOR COURT OF JUDICATURE, AND OF THE SUPREME JUDICIAL COURT.— THEIR HISTORY AND PLACES OF DEPOSIT.

Since the paper entitled *The Early Court Files of Suffolk County* was communicated to the Society,¹ I have found among the papers upon the Files of the Supreme Judicial Court, in a case determined in 1791, a rather curious document, which throws an interesting light upon the history and fortunes of the original files and papers of the Courts in their early days, and which suggests one explanation, at least, among others, and one out of many causes, of the condition in which they were found, when the work of arrangement and restoration was begun, in 1883.

While the original Records — that is, what are commonly called the Court Records of the three successive highest Courts of the Colony, the Province, and the Commonwealth, as contemporaneously made up from the pleadings and other papers in the several cases, and recorded at length in a long series of volumes designated as Court Records — are substantially full and complete from 1673 to the present day, with certain gaps hereinafter referred to, the original papers themselves, in the cases during the earlier part of the period, are not to be found on the regular files or are found only to a partial extent and in a more or less imperfect condition.

No regular files of papers, which have preserved intact their original file arrangement, are to be found earlier than those of 1730; and the papers for the next twenty years are more or less broken and incomplete. But in the course of arranging the quarter million of miscellaneous papers described in my previous communication, very large numbers, as there stated, of these missing originals were found, and identified with their respective cases.

¹ In January, 1897. Publications, III. 317-328.



These were brought together from their scattered confusion and disorder, and indexed so as to be readily referred to; and the files of the earlier years, thus discovered and restored, were made more or less complete.

The document just discovered is valuable as well as curious for the reasons first stated. It tends also to confirm some conclusions advanced in that communication, as well as to establish, substantially, the truth of some venerable traditions. It contains two Certificates of the Clerks of the Supreme Judicial Court given in 1781, only five years after the event to which they refer,—the Siege of Boston,—of which both Clerks must have been eye-witnesses. These bring positive testimony to bear upon what was before a mere matter of conjecture or vague tradition. They show directly what injuries the Records suffered at that time, injuries much greater than has generally been supposed, and which no attempt had been made to repair when these Certificates were written; in fact, this confusion and disorder continued to a greater or less extent for a hundred years.

The tradition laid the scene in the Old South Meeting House, but it is now shown to have been in the Old State House.

The interest of these two Certificates lies more in the explanation given of the futility of any search and in the statement of existing conditions, than in the result and its bearing on the case in hand,—another instance of the many where the most important and valuable history is that which is to be read between the lines. They run as follows:—

I.

Boston July 5: 1781.

This is to certify that I have made the most diligent Search for a Writ of Facias habere Possessionem issued May 13: 1745 in favor of the Proprietors of the common Lands in the Town of Haverhill against Benjamin Barker of Andover, but have not been able to find it.

This also certifies that the old files of the Office were so scattered during the Siege of Boston, that it would require much time to collect them, and an attempt to find a single Paper would in all Probability be in vain.

Attest. AND. HENSHAW, Clerk.

1807.] SUPERIOR AND SUPREME COURT RECORDS.

7

II.

This may certify that I have examined the Files and Papers in the Clerks office of the Supreme Judicial Court in order to find the within mentioned Writ of Habere Facias & cannot find the same. I also Certify that there are but a very few Papers in said office previous to the year A. D. 1755. Those Papers & Files belonging to said office before that time (& some since) are chiefly as I apprehend in one of the Cock-Lots over said office where said Files are all separated & scattered abroad on the Floor — upon which it is said, the Soldiers lay in the time of the Siege of Boston — that it would be almost impossible to find a Single Paper without searching and looking over the whole.
Sept. 20th 1781.

Attest CAA: CUSHING, Clerk.¹

The missing paper referred to in the Certificates was the final process in a sharp litigation between the Proprietors of the Common Lands in Haverhill and Benjamin Barker of Andover, over a tract of sixty acres lying in the town of Methuen, once a part of Haverhill. It began in the Inferior Court of Common Pleas, in July, 1740, in a plea of ejectment brought by the Proprietors. Reserved on a plea in abatement it went to the Superior Court of Judicature for Essex, November, 1740, upon the appeal of the plaintiffs, where the defendant prevailed and the writ was abated.² Starting again in the Inferior Court, in March, 1741, it was appealed by the plaintiffs to the Superior Court, May, 1741, where the verdict was for the appellee and the judgment confirmed.³ Defeated again, but not discouraged, the plaintiffs brought a review in the same Court in May, 1742, with a like result.⁴ At this hearing the defendant was represented by the celebrated lawyer William Bollan, the son-in-law of Gov. Shirley. Under an enabling Act of the General Court, 25 June, 1742, the Proprietors brought another review in the Superior Court in November, 1742, where, at the May Term, 1743, they at length came off victorious and judgment was entered in their favor.⁵

¹ Suffolk Court Files (Essex), No. 134,242.

² Records of the Superior Court of Judicature, 1740-1742, xiv. 11.

³ Ibid. 1740-1745, xv. 80.

⁴ Ibid. 1740-1742, xiv. 206.

⁵ The Records for this Term are lost, — probably they were consumed in the Fire of 1747, — but the Judgment and Record with some of the other papers are in Suffolk Court Files,cocksl. 57,045.

The defendant, flushed with five victories to offset this defeat, was not inclined to yield, and in his turn obtained an enabling Act, 15 September, 1743,¹ which "vacated and annulled" the previous judgment, and under which a review was entered in the Superior Court, November, 1743. The record in this case sets out in full all the successive stages of this legal battle. Under a Rule of Court, with a view, apparently, to close a litigation that seemed almost endless, the case was referred to a board of arbitrators, whose award was to be final. At the next Term, May, 1744, they brought in their Report in favor of the Proprietors. Judgment for possession was accordingly entered, and this execution issued 18 May, 1745, as minuted in the margin of the Record.²

Among the Suffolk Court Files there are some forty papers belonging to this case in its successive stages. In one group, only three papers remain out of eighty-five which the endorsement of the wrapper shows to have been once in existence. Some of these papers are especially valuable, since they largely supply the missing Record referred to.³

The two Certificates are found among the Files in the Case of William Bodwell *et al.* v. Jonathan Barker, tried at the November Term (Essex), 1791. The suit is for the possession of some one hundred acres of land in Methuen, apparently closely related to the tract involved in the earlier litigation. It began in a plea of ejectment in the Inferior Court of Common Pleas, April, 1791, brought by Barker, in which the defendants prevailed. Barker then appealed to the Supreme Judicial Court at the June Term, 1791, where judgment was rendered in his favor, and an execution *Hab. Fac. Pro.* issued 6 September, 1791.⁴ The defendants then brought a review tried at the next November Term, where judgment was again entered for Barker and execution issued 16

¹ Suffolk Court Files, ccclxvii. 57,842.

² Records of the Superior Court of Judicature, 1743-1747, xvi. 79.

Group No.	Group No.
Suffolk Court Files, ccclxvii. 58,460	Suffolk Court Files, ccclxvii. 57,842
" ccclxix. 54,582	" ccclxxv. 59,025
" cccliii. 55,252	" ccclxxxiii. 61,196
" ccclxi. 57,045	

³ Records of the Supreme Judicial Court, June, 1791, xiii. 162.

November, 1791.¹ This File consists of twenty-eight papers, containing among others the original writ of review 14 September, 1791, the pleadings, the record in the Court of Common Pleas, and on the appeal, with various copies of old deeds, depositions, the will of Benjamin Barker, the litigant of half a century before, who was the grandfather of this plaintiff, with various other documents, some of them, like the Certificates, bearing the date of 1781, and others the later date of 1791. What was the stage of the controversy at the earlier date does not appear. The missing execution of 1745, then undiscoverable, seems never to have been subsequently found. It is a curious circumstance that an *alias* execution, referring to the original one, and dated within sixty days, 2 July, 1745, bearing the endorsements of the delivery of possession by the Deputy Sheriff, 5 July, 1745, and the receipt of possession by a Committee of the Proprietors, 6 July, 1745, together with the moderate costs awarded them, in full satisfaction, is now among the Files.² That the original of such an execution should have been returned unsatisfied seems a little strange, and this, coupled with the early issue of an *alias*, may be some indication that the missing original — a search for which, in 1781, would have been so difficult, according to the Certificates, — was in some way lost shortly after its issue. At all events, the existence of this *alias* would seem to have been unknown when the Certificates were given, and at the time of the trial, and to have come to light a hundred years later in the overhauling and arrangement of these old papers.

These Certificates bear the names of the two Clerks of the Supreme Judicial Court at that time. Both had been Clerks of its predecessor, the Superior Court of Judicature, Charles Cushing's name first appearing on its Records in October, 1776, though there is no record of his appointment. Andrew Henshaw had been sworn 17 February, 1778.³ Upon the organization of the Supreme Judicial Court, he was appointed Clerk, 20 February,

¹ Records of the Supreme Judicial Court, November, 1791, xiii. 811.

² Suffolk Court Files, ccclxxxiii. 61,196.

³ "And now Mr. Andrew Henshaw being present in Court, is appointed Clerk of said Court and he is sworn accordingly." (Records of the Superior Court of Judicature, 1775-1778, xxxiii. 212.)

1781,¹ and held the office till his death in 1783. Charles Cushing was appointed at the same Term.² The custom of having two Clerks with equal authority runs back to the days of Judge Sewall, who enters in his diary: "Feb. 25, 1718-19, the Judges meet in the Council Chamber, before the meeting of the Council. . . . There, in the Closet, voted it convenient to have two Clerks."³ Samuel Tyley and Benjamin Rolfe were sworn into office the next day, as appears by the Records of the Court.⁴

¹ The Commonwealth of Massachusetts

Suffolk sc.

At the Supreme Judicial Court, of the Commonwealth of Massachusetts, begun and hold at Boston, within and for the County of Suffolk, on the third Tuesday of February (being the 26th day of said Month) Anne Domini 1781.

And now Commissions under the seal of the Commonwealth, appointing William Cushing, Esq^r Chief Justice, and Nathaniel Peaslee Sergeant, David Sewall and James Sullivan Esq^r Justices of the Supreme Judicial Court of this Commonwealth, were read and published in Court, and the Court thereupon appointed M^r Andrew Henshaw, Clerk of the late Superior Court of Judicature &c. to be Clerk of the said Supreme Judicial Court.

By the Hon^r WILLIAM CUSHING,
Chief Justice
NATH^r PEASLEE SARGENT
DAVID SEWALL, and
JAMES SULLIVAN, Esq^r Justices

(Records of the Supreme Judicial Court, 1781-1782, i. 1.)

² The exact date does not appear, but the appointment is in the following words:—

"And now Charles Cushing Esq^r is appointed a Clerk of the Supreme Judicial Court, in the room of Mr. Oliver Peabody who has resigned, and he is sworn accordingly."

Then follows the closing paragraph of the Record of this Term — adjourning the Court — which is dated 6 March, 1781. (*Ibid.* i. 11.)

³ Sewall's Diary, iii. 213.

⁴ To Samuel Tyley, Jun^r & Benjamin Rolfe Gent^r.

Whereas you are appointed Clerks of the Superior Court of Judicature Court of Assize and General Goal Delivery within this Province with full power to Act Jointly or Severally. You Swear by the Everliving God that you will well & truly Grant all Writs Warrants and Executions, not delaying Justice, That you will make true Entries and keep fair Records of the Courts proceedings, and faithfully & safely keep all Books files and papers committed to your care. And Generally you shall deal seriously faithfully

There would seem from the Records to have been more than two Clerks sometimes in office, as, apparently, the appointments occasionally overlap. The Courts had the power of appointment, and the exigencies of the service not infrequently required the

and Impartially in all things proper to your office and shall well and truly Execute the same without any Sinister respects of favour or displeasure taking no other than lawful Fees. So help you God.

SAMUEL TYLEY Jun^r
BENJ^r ROLFE

Council Chamber in Boston
February 26th 1781.

Signed & Sworne Cor: Nobis
SAM^r SEWALL
BENJ^r LYND^e
ADDINGTON DAVENPORT
PAUL DUDLEY
EDM^r QUINCY.
Justices of the Superior Court.

Entered & Examined

BY SAMUEL TYLEY Cler—
BENJAMIN ROLFE Cler.

(Records of the Superior Court of Judicature, 1718-1721, iv. 1.)

Previous to 1718 the Clerks of this Court had been, successively, —

(1) JONATHAN ELATSON, appointed 20 December, 1692. (Council Records, ii., 211.)

(2) ADDINGTON DAVENPORT, appointed 7 November, 1695.

Upon the motion of Jonathan Elatson Clerk of the Court to be discharged of his Office being by some important Affairs of his own obliged to take a Voyage to the West Indies, and thereupon praying a Clerk may be appointed to receive the records of this Court. —

The Court do appoint M^r Addington Davenport to be Clerk of the Superior Court, and that he be accordingly Sworne. The s^t Addington Davenport was accordingly Sworne the Seventh day of Novemb^r 1695, to which day the Court was adjourned.

The Court do order the s^t Jonathan Elatson to deliver up all the Records in his Custody unto the s^t Addington Davenport he giving him a receipt for the same whereupon he is discharged.

Attest. JON^r ELATSON, Cler

(Records of the Superior Court of Judicature, 1692-1694, i. 226.)

(3) ELISHA COOKE Jr.

Boston October 24 1696

Mr Elisha Cooke was admitted and sworne Clerk of the Superior Court of this Province;

Sworne before Me Sam^r Sewall, one of the Justices of s^t Court at the

appointment of special Clerks. A question arose at the time of the re-arrangement of the Justices, 3 May, 1776, as to the exercise of the power of appointment out of Term time, when Samuel Winthrop was appointed Clerk, which required the interposition of special legislation. Due authority was given 10 May, and the whole proceeding is set out upon the Records of the Court.¹

House, and in the presence of Elisha Cooke Esq^r his Father Annoq. Domini 1696. (Records of the Superior Court of Judicature, 1696-1700, ii. 190.)

Cooke's appointment was subsequently continued as will be seen by the following extract from the Court Records:—

Middlesex as: Charlestown Jan^y 29th 1716.

The Court being opened. The Judges being all present and their Respective Commissions published they were pleased to Continue & Appoint Elisha Cooke Esq^r to be Clerk of the said Court to which Office he was Sworn Accordingly As

Attest: P. DUDLEY At^t. Genl.

(Records of the Superior Court of Judicature, iv. 165.)

¹ In General Council May 8th 1776.

Ordered, That the Justices of the Superior Court of Judicature &c. be Arranged in the following manner viz,

Hon^r JOHN ADAMS, Esq.
W^r CUSHING, Esq.
JAMES WARREN, Esq.
JED^r FOSTER, Esq.
JAMES SULLIVAN, Esq.

A true Copy from the Minutes

JOHN LOWELL D^r S^r P.T.

In the House of Representatives May 10th 1776.

Whereas some doubts may arise about the appointment of a Clerk of the Superior Court of Judicature Court of Assize and General Gaol Delivery out of Term Time.

It is therefore Resolved that the Justices of said Court or any three of them be and they hereby are authorized and Empowered out of Term Time to Appoint a Clerk to said Court which Clerk when so appointed and being duly sworn to the faithful discharge of said office by Either of the said Justices shall have all the powers to a Clerk of said Court belonging any Law or usage to the Contrary notwithstanding

Sent up for Concurrence
SAM^r FREEMAN Speak P.T.

In Council May 10th 1776
Read and concurred.

PATRICK MORTON D. Secy

There is also another document,— a Deposition of one of the Clerks of the Court of Sessions — which shows the loss of certain Records in the great Fire of 1747,— another event having an important bearing upon the present state and condition of the Files and Records, — reference to which is made hereafter in this paper.

III.

The Deposition of Ezekiel Goldthwait of Boston in the Province of the Massachusetts Bay in New England & the said Deponent Testifies & says that before the fire happened that Consumed the Court House in Boston the Ninth of December 1747 there were in the secretary's office two folio Books in which were Recorded many Deeds & Conveyances of Lands lying in the late Province of Main, now in the County of York that this Deponent has often had said Books in his Possession, and Copied out from them Sundry Instruments for the Late Secretary Willard that said Books were usually kept in the Lobby belonging to

Consented to

W. SPOONER	J. PRESCOTT
CALLES CUSHING	ELDAD TAYLOR
J. WINTHROP	J. PALMER
B CHADBURN	M. FARLEY
JOHN WHITCOMB	B. WHITE
T CUSHING	JED ^r FOSTER
	MOSES GILL
	S HOLTON
	JA FISHER

A true Copy

Attest

JOHN LOWELL D^r S^r P.T.

Colony of the Massachusetts Bay May the 10th A. D. 1776.

We the Subscribers Justices of the Superior Court of Judicature, Court of Assize & General Gaol Delivery in & for said Colony hereby appoint Samuel Winthrop of Boston in the County of Suffolk Esq^r Clerk of the same Court

W^r CUSHING
JED^r FOSTER
JA SULLIVAN

May the 30th 1776 — Then the sd Winthrop made oath for the faithful discharge of his duty & office as Clerk of said Court, before me

W^r CUSHING a Justice of s^r Court.

(Records of the Superior Court of Judicature, 1775-1776, xxxiii., page 3 of a fold of small sheets at the beginning of the book.)



the Council Chamber and Soon after said Fire this Deponent was told that said two Books with many others belonging to the secretarys office were consumed by said Fire & which he Verily believes to be true as he has never seen them since.

EZEKIEL GOLDFTHWAIT.¹

¹ For a long period EZEKIEL GOLDFTHWAIT was active in all town affairs. He was elected Town Clerk (see his autograph in Memorial History of Boston, II. 557) in 1741, and held the office continuously by annual election, and often by a unanimous vote, until 9 March, 1761, when he retired, and it was "Voted, unanimously, that the thanks of the Town be and hereby are given to Ezekiel Goldthwait, Esq., for his faithfull services many years past as Town Clerk" (Boston Record Commissioners' Reports, xvi. 46). Though advanced in years as the Revolution drew on, he served on many Committees, — to wait upon the Lieutenant Governor after the affair of the Fifth of March; to visit the Schools, associated with the leading citizens; superintending various municipal interests and concerns, — and he was often Moderator of the Town Meeting. (Reports of the Record Commissioners, xviii., xx., xxiii., and xxv., *passim*.)

He also filled many County offices: — (1) Notary Public, 24 June, 1741 to 1770; (2) Justice of the Peace, 12 August, 1749, and (3) made of the Quorum, 5 November, 1761 (Whitmore's Civil List); (4) Clerk of the Court of General Sessions of the Peace (see "account of Ezekiel Goldthwait and Middlecott Cooke, Clerks," etc., against the County of Suffolk "for making Warrants for County Tax," etc., 11 February, 1754, and their "Memorial" for services after the Fire of 1747, given, *post*, p. 25; Suffolk Court Files, cccxi. 63414, cccxlii. 72361, and also Boston Town Records as late as 1774); (5) Clerk of the Inferior Court of Common Pleas for many years (see Records, xxxviii., in which he attests many entries, although there is no attestation for the Terms, except in a single instance, where he affixed his signature, and the writs are signed by him. The Records of this Court from 1732 to 1776 are missing, "supposed to have been carried off by the Tories in 1776"). The two Clerks of this Court were divided in political opinion at the Revolution, — Goldthwait siding with the Tories and Ezekiel Price with the Whigs. (Cf. Footnotes on pages 61, 62, *post*.) (6) Register of Deeds from 1740 till 1776. A Deposition appears in the case Fletcher v. Vassall, 11 February, 1742, by "Ezekiel Goldthwait, Register of Deeds and Conveyances of Houses & Lands within the County of Suffolk" (Suffolk Court Files, cccccxxiiii. 7018:15). In 1771, he was chosen, by a heavy majority, over Samuel Adams, and on the counting of the votes in the Court of Sessions, — having received 1123 out of 1500 cast, — he was declared by the Court "to be duly elected, and he was, accordingly, sworn into office." (Minutes Books of the Court of General Sessions of the Peace, No 5 (Suffolk) 1768-1772, under date of 16 May, 1771.) "Ezekiel Goldthwait Esq having made a Present to this County of his Majesty's Arms Carved, Gilt & Painted in a handsome Manner, in order to be placed in the County Court Room, The Justices of this Court Thanked Mr. Goldthwait for the same in open Court, and ordered that a Record thereof be

SURFOLK, ss. Boston, November 27th 1758. Then the above Named Ezekiel Goldthwait Esq^r living more than thirty Miles Distant from York in the County of York the Place where the Cause is to be tryed in which the above Affidavit is to be used personally appeared and after being Carefully Examined & Cautioned to Testifie the whole Truth made Solem oath to the truth of the above Deposition by him Subscribed, Taken to be used at the Inferior Court of Common pleas to be holden at York in & for said County of York on the first Tuesday of January next in a Plea of Ejectment: Depending in said Court wherein the Honourable Samuel Waldo of said Boston, Esq. is Pit. and Thomas Haskell of Falmouth in the County of York, shipwright & husbandman is Deft. the adverse Party Thomas Haskell aforesaid not living nor being within Twenty Miles of Boston the Place of Caption was not notified nor present at the Caption of said oath.

Coram JOHN PHILLIPS Jus. Pucis.
Copy Exam^d & Jr^r. Frost, Cler.¹

One other Certificate has been found which affords further particulars of the loss to the public archives occasioned by the Fire of 1747.

IV.

Province of the }
Massachusetts Bay. }

Mr^r. Mehitable Sergant; Administratix of the Estate of her former Husband M^r. Tho^r Cooper deceased claims a certain Tract or Parcel of Land Scituate lying and being in Casco Bay by Said Mr. Thomas Cooper purchased of Mrs. Mary Lawrence of Boston formerly Relict of M^r. George Munjoy of Said Casco and George Munjoy of Said Boston son of Said George Munjoy De^r: the Same is Bounded as followeth that is to say to begin on the other side of Amancogon River at the Great Falls the upper part of them called Secarrabbig and so down the River Side unto the lowermost Planting Ground the Lowermost Part thereof and so from Each aforesaid Bounds to go Directly into the Woods so far

made." (*Ibid.* — Session of first Tuesday of October, 1771). He seems to have been somewhat of a patron of Letters, as his name is found in the List of Prince's Subscribers in 1736 (Memorial History of Boston, II. 561). He figures, too, in the List of Loyalists (*Ibid.* iii. 176), in that of the Addressers of Hutchinson, — "Ezekiel Goldthwait, County Register & Clerk of the Inferior Court" — (Proceedings of the Massachusetts Historical Society for October, 1870, xi. 303), and also as a Protester against the Soterra League and Covenant (*Ibid.* xi. 304).

¹ Suffolk Court Files, June Term (York), 1762, No. 187,148.

as the said Cooper Will, not Exceeding one mile together with all and singular the Trees and Woods thereof, Profits Priviledges &c. as per Deed thereof dated April 5th 1692 Proved by the Oaths of George Holland & John Nickells before Richard Middlecot one of the Council September 22, 1692.

The same aforesaid Tract of Land purchased by the said George Manjoy the Father of the said George Manjoy of the Indians Nunkattacumt Warabittie as per their Deed dated June 4, 1666 acknowledged Decr the 10th 1666 before Henry Joslyn J. P a Copy whereof was brought into the office to be Recorded attest by

JOSEPH WEBB clerk

I do hereby certify that the foregoing is a True Copy of Record from the Book of Indian Claims in the Secretary's office for said Province and that I have made Diligent Search after the Indian Deed¹ mentioned & the Record thereof and have not been able to find either of them nor the attested Copy thereof Signed by Joseph Webb Clerk; and I do further Certify that the Books of Record of Deeds and other writings in the Secretary's office were Consumed when the Court House in Boston was Burnt on the 9th or 10th day of December 1747 and that the Books Containing Such Records Now in Said office Commence from that Time only.

Attest Thos: CLARK Dyer Secy

I the Subscriber Clerk of the Inferior Court of Common Pleas within and for the County of Suffolk and Register of Deeds and Conveyances for said County do hereby Certify that having Search'd the Records do find that Joseph Webb was appointed Clerk on the 30th of July 1689 and Continued so till some time in the year 1698 and that he was also Register of Deeds for s^t. County having attested the Records thereof from Oct: 1689 to Agust 20th 1698.

At: Exmt Goldthwait Clerk &
Register
Boston Novem: 27th 1788.

Copy Exam^d V Jr: Frost, Cler.

[Endorsed] "Coopers Claim to the Commissioners of Claims. Copy²

The two successive highest Courts, — the Superior Court of Judicature and the Supreme Judicial Court, — whose jurisdiction extended through the Province and the Commonwealth, had their

¹ This deed is printed in Will's History of Portland (1865), p. 965.

² Suffolk Court File, No. 187, 142, July Term (Yerk), 1788. Suit of Haskell v. Webb.

headquarters in Boston, and there all the Records were kept until 1787, while sessions were held also in the different counties.

What old Court Files and papers directly record is but a part of the story they have to tell. Illustrations of the moral and social conditions of the times lie between the lines; glimpses of political changes continually appear; in manifold ways they are the mute chroniclers of events with which they would seem to have had naturally slight connection, and no little history is written, not alone in their faded pages but as well on their battered and mutilated leaves. Where they have been and what they have gone through, increasing year by year since that first record of the session aboard the Arbella, is mixed up with the life and history of two centuries.

It was a long time after the founding of the Colony before the Courts had any abiding place which could be called their own or styled a Court House. After the brief record³ "Att a Court of Assistants aboard the Arbella, March 23rd 1629," — that is to say 1630, New Style, — the day after the Colonists embarked, the first record of any sitting this side the Atlantic is that entitled "The first Court of Assistants holden att Charlton August 23rd Ano Dom 1630."⁴ Johnson states that this Court also was held aboard the Arbella.⁵ Mr. Charles Card Smith, in his article on Boston and the Colony,⁶ questions this, "as his [Johnson's] work was not published till 1654, the statement is of doubtful authority," but he assigns no place. It seems more likely that the Court was held in the "Great House" wherein "the Governour and several of the Patentees dwelt," especially as there (by an order of 23 August⁷) the sitting of 7 September was fixed, — "Att the Govin⁸ howse." At that sitting "It was ordered that only third Tuesday there should be a Court of Assistants helde att the Govin⁹'s howse (for the tyms being,) to begin att 8 of the cloks in the morneing."¹⁰ Two Courts were successively held in Charlestown, — on the seventh and twenty-eighth of

¹ Massachusetts Colony Records, i. 78.

² *Ibid.* i. 78.

³ Wonder-Working Providence (Pocock's edition), p. 87.

⁴ Memorial History of Boston, i. 237.

⁵ Massachusetts Colony Records, i. 74.

⁶ *Ibid.* i. 76.



September, at the latter of which "A Jury impaneld to inquire concerning the Death of Austin Bratcher" brought in their finding,¹ and at the next Court, which was "holden att Boston Novemb'r 9, 1630," Walter Palmer was put on his "Tryall" . . . and a jury of twelve men found him "not guilty of manslaughter whereof hee stooode indicted & soe the Court acquits him."²

Where the Court was held in Boston, up to the time of the building of the first Meeting-House, in 1632, does not appear. After that was built, on the present site of Brazer's Building in State Street, the Court was apparently held there, and, when that became "decayed and too small" for purposes of public worship, in its successor, which stood where the Rogers Building, on Washington Street, now is. This is indicated by Winthrop's mention of the sitting of the General Court there, in May, 1634;³ and in 1640 Lechford⁴ says, "the Generall and Great Quarter Courts are kept in the Church Meeting-house at Boston." In those days of small things sufficient accommodation seems to have been thus afforded, and, considering the close connection between the law of God and the law of the Colony, there was a peculiar fitness in the arrangement.

Where the Records of the Court were kept there is nothing to show; it may have been in the Meeting House, but more likely at the house of the Secretary for the time being. Perhaps in the early days the Records were not very voluminous, as would appear by an Order of the General Court,⁵ of 9 September, 1639:—

"Whereas many judgments have beene given in o' Courts, whereof no records are kept of the evidence & reasons wherupon the verdict & judgment did passe, the records whereof being duly entered & kept would bee of good vse for president to posterity, & a releife to such as shall have just causes to have their causes reheard & reviewed, it is therefore by this Court ordered & decreed that henceforward every judgment, w^m all the evidence bee recorded in a booke to bee kept to posterity"; and the fee prescribed was "for every judgment at the Court at Boston, 6".

In the only volume of the Records of the Court of Assistants

¹ Massachusetts Colony Records, i. 78.

² *Ibid.* i. 81.

³ Winthrop's History of New England (edition of 1858), i. 158.

⁴ Plain Dealing (Trumbull's edition), p. 64.

⁵ Massachusetts Colony Records, i. 278.

extant,—that covering the period from 1673 to 1692—the entries are extremely brief and compact.

The needs of the Town in no long time became pressing, and a demand arose for better and permanent provision for the Courts. In 1649, on the twelfth of March, "At a generall Townes meetinge," an order was passed looking towards an undertaking "to bulilde a howse for the Courts to be kept in,"¹ but nothing seems to have come of it, and the Courts apparently kept on in their old quarters. Relief, however, came at length, as so often has happened since in Boston's history, through the public spirit of one of her citizens. Captain Robert Keayne,—

"haveing long thought and considered of the want of some necessary things of publike concernment which may not be only comodious but very profitable & usefull for the Towne of Boston, as a Market place & Candit . . . also to have some convenient roome or too for the Courts to meeet in both in Winter & Sumer,—

dying 23 March, 1656, by his will,² dated 28 December, 1655, left three hundred pounds for such public uses. The Selectmen took action 25 February, 1657, "respecting the legacieys given to the towne."³ On the ninth of March following a Committee was appointed—

"to consider of the Modell of the towne house to bee built . . . and the most convenient place, as also to take the subscriptions of the inhabitants to propagate such a building,"⁴

and some time in 1658 the first Town House in Boston was completed.⁵ The history of this ancient building, and also of its suc-

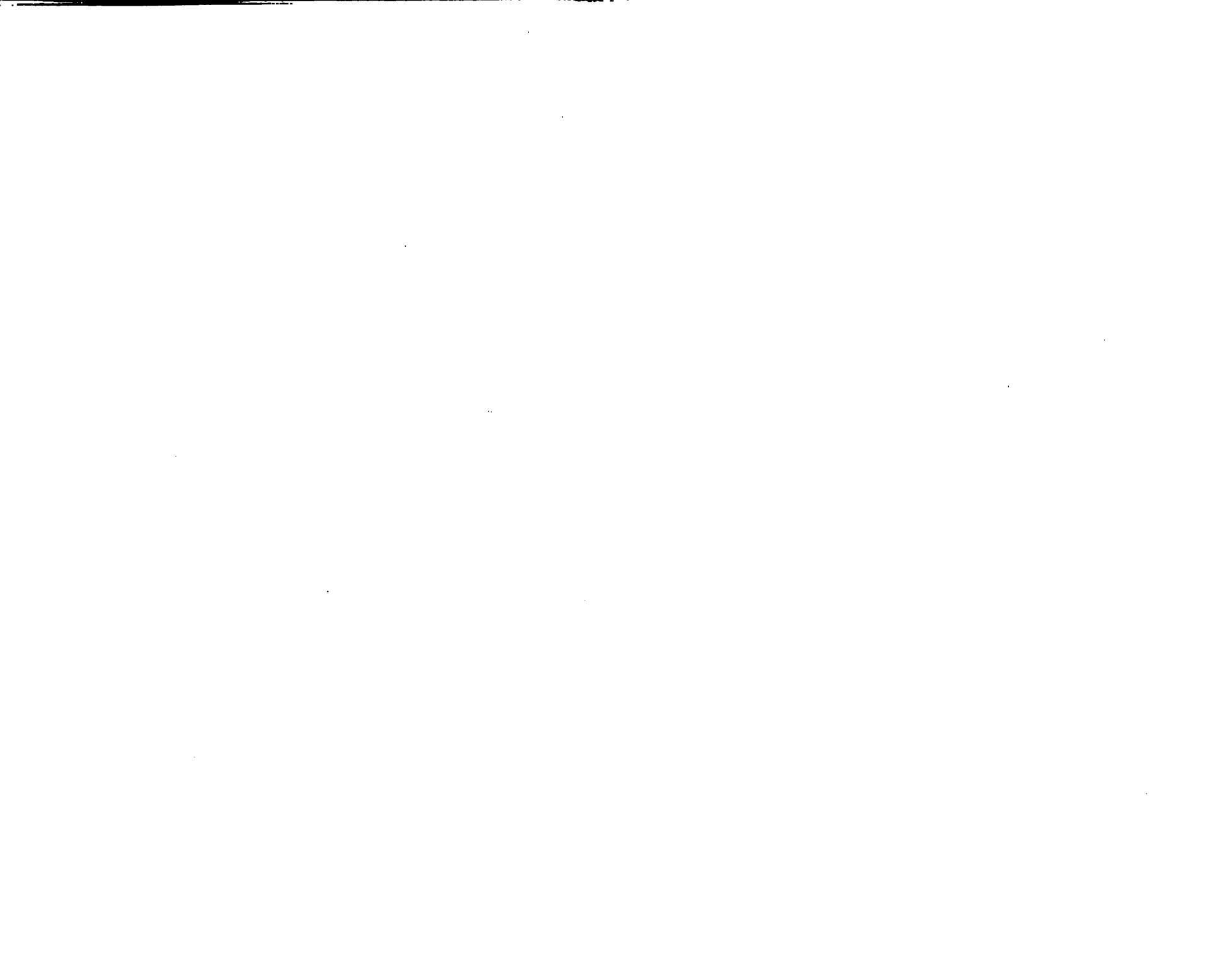
¹ Boston Record Commissioners' Reports, ii. 94.

² Suffolk Probate Files, No. 171; Boston Record Commissioners' Reports, x. 1.

³ Boston Record Commissioners' Reports, ii. 182.

⁴ *Ibid.* ii. 134.

⁵ Among the Suffolk Court Files (xxvii. 223) is a collection of papers, forty-six in number, relating to Capt. Keayne's estate, his family, etc. Among them is an Inventory of the contents of his house, at his death, from attic to cellar, room by room. There is also a copy of a Record of the Court of Assistants, 1 March, 1658, of the divorce suit of his daughter. This is curious as bearing the certification "A true copy taken out of the Court's booke of Records (being therewith compared)." This copy is attested by Edward Rawson; again attested as copied by Addington; Addington's copy attested by Rawson again; and that again by Addington; thus showing successive copies of the original



cessor on the same site, has been so fully and learnedly given by the highest authority¹ upon this and the other ancient buildings of Boston, that only the briefest reference here will be necessary.

The occupation of this Town House by the Courts is recognized by the order of the General Court, 19 May, 1658, making an allowance to Boston —

"for and towards the charges of their towne house . . . provided that sufficient rooms in the sayd house shall be for ever kept free for the keeping of all Courts," etc.²

This building stood until its destruction by the Fire of 2 October, 1711. Its occupation by the Courts through this whole period appears from Mr. Whitmore's quotations³ from Josselyn, who was in Boston in 1663, from the orders of the General Court in 1667, and again in 1671, from John Dunton in 1686, and from various passages in Judge Sewall's Diary, among others the reference to the trial of John Quelch and the other pirates in 1704.⁴ "The Humble Representation and Address of the Select Men of the Town of Boston . . . To his Excellency Joseph Dudley, Esqr. . . . the Honorable the Council and the Representatives in General Court Assembled," 17 October, 1711, "Amidst the Awfull Desolation & Consumption of Many Dwellings & much of the substance of the Town by the fiery dispensation of Providence" refers to the use of the building, "now lyinge Waste in its Ashes," by the "Courts of Justice,"⁵ a use now terminated after more than half a century.

While the rebuilding was going on the town meetings, and probably the Courts, were held in the Meeting-Houses. The Town House, rebuilt upon the old site, was occupied in May, 1718.

and its copy. It proves the existence of a first volume of Records, which has been missing since before the memory of man.

¹ Mr. William H. Whitmore, in his Address at the Re-dedication of the Old State House, 11 July, 1882, with elaborate and exhaustive Appendices, wherein he has set forth about all that is known on the subject, with copious authorities cited for every material point, — a work giving another illustration that a gleaner after him in any field will find few heads of grain left to be gathered up.

² Massachusetts Colony Records, iv. (Part I.) 237.

³ Re-dedication of the Old State House, Boston, 1883 (Fifth edition, 1889), p. 21.

⁴ C. Publications of this Society, iii. 71-77.

⁵ Re-dedication, etc., p. 123.

The Instruction given to the building committee¹ ordered them to fit "the West Chamber for the Sup' & Inf' Courts;" and of the "two offices below stairs . . . one for the Secretary." "Notwithstanding the order to construct a West room for the Courts, it is very doubtful if this were really done."² Even if such a room were not specially fitted up, it would seem that "the Courts for the County of Suffolk were held in the old Town House, until it was burnt in 1747, with occasional sessions, when necessary, in the First Church building or elsewhere."³ This would appear from Daniel Neal's account in 1720,⁴ where he speaks of "another Spacious Room for the Sessions of the Courts of Justice."

On the twenty-first of September, 1718, the Selectmen seeming greatly exercised at —

"a Publick Notification und^r the hand of Edward Weaver, Dep^r Register of y^r Court of Admiralty, Signifying an appointment of a Sale of a ship . . . at the place where the Court is held . . . haveing signified to the Judge of the s^t Court That the management of a Publick Sale in y^r Town House is Forrein from y^r declared Intentions in Erecting thereof, and that such a President may be of ill Tendency . . . In discharge of the Trust Reposed in them, they hold themselves obliged to disallow the Improveing any part of y^r House to any other use than what was proposed in Erecting the same. And they do direct that the s^t Hon^d Judg have an Attestated Copie thereof forthwⁿ Sent him."⁵

There are numerous references to the building as a "Court House" in the orders and resolutions of the General Court after the Fire of 1747; and again by Secretary Willard in his letter to Christopher Kilby and William Bollan, Agents of the Province in London, 21 December, 1747.⁶

From the apportionment of the charges, —one-half to the Province, one-fourth to the County, and one-fourth to the Town, — it would

¹ Re-dedication, etc., p. 185.

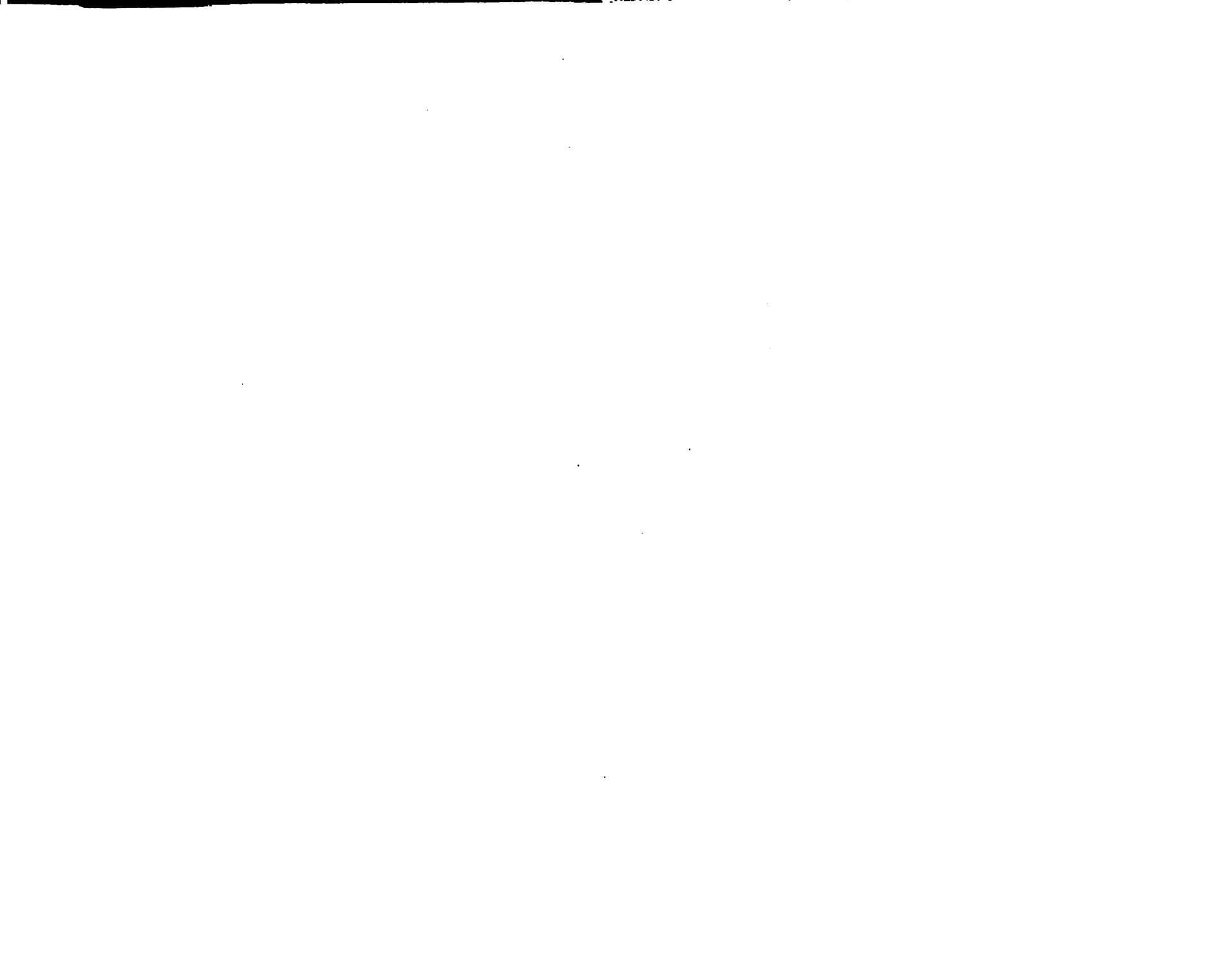
² Whitmore, in Re-dedication, etc., p. 49.

³ Ibid. p. 173. In confirmation of this opinion see ante, p. 7, and post, p. 25.

⁴ The History of New England. Containing an Impartial Account of the Civil and Ecclesiastical Affairs of the Country to the year of our Lord 1709. To which is added The Present State of New England, London, MDCCXX, ii. 567.

⁵ This is referred to by Whitmore, in Re-dedication, etc., p. 52. The whole proceeding is given in Boston Record Commissioners' Reports, xiii. 8.

⁶ Re-dedication, etc., p. 59.



seen that the Courts of Suffolk County were held here, at all events that the highest Court — the Superior Court of Judicature — had its quarters in this building.

Upon the restoration of the Town House, after the Fire of 1747, the Courts were again held here. The famous trials and the stirring scenes within its walls are matters of familiar history. Several descriptions of the building are quoted by Mr. Whitmore, — that of Francis Goelet in 1750 (p. 61), that in the Massachusetts Magazine, August, 1791 (p. 63), and that of Thomas Pemberton in 1794 (p. 97).

The question of a new Court House came up in 1765; and in 1769 the building had been erected in Queen Street, now Court Street, to which the Courts were removed.¹ Whether the Superior Court of Judicature went with them or not is not clear. The offices of its Clerks, which were on the north side of the building, still continued to be kept in the old building; and these Certificates show those of the Clerks of the Supreme Judicial Court, its successor, to have been still there in 1781, with the multitudinous mass of files and papers piled in confusion and disorder in "the Cock Lofts" above. Dr. George H. Moore² says, "At the beginning of each Term the Judges robed themselves there and marched in procession, followed by the Bar, to the Court House," and speaks of the custom as existing in 1785; and Harrison Gray Otis, also cited, in his Inaugural as Mayor in 1830, refers to it as a well known custom.³

¹ There are numerous papers relating to the building of this Court House in the Suffolk Court Files, accv. 65,414; dix. 88,801.

Edmund Quincy, John Avery, and Samuel Pemberton, three of the Justices of the Court of Sessions, were appointed a Committee to audit the account of the Building Committee of the New Court House, in 1769. Their Report approves the accounts and gives the cost, including the compensation to the Building Committee, £46.—£241s. 10d. Lawful Money. (Minute Books of the Court of General Sessions of the Peace, No. 5 (Suffolk), 1769-1772, Session of 1 May, 1770.)

Much interesting information concerning "The Court House, The Jail, and The City Hall" has been brought together by Mr. Whitmore in Appendix L in Re-dedication, etc. which also contains a reproduction of the Plans by Ogged Carteret, in 1800, and John G. Hale, in 1814, of the Square bounded by Court, Washington, School, and Tremont Streets, showing these public buildings.

² Quoted in the Re-dedication, etc., Appendix M, p. 192.

³ Inaugural Address of the Mayor of Boston, i. 167.

A new Court House was built in 1810 upon School Street, on the site of the present City Hall, to which the County and State Courts were transferred. Mr. Whitmore quotes from Shaw's description of it in 1817, showing — "two Court-rooms in the centre and one smaller in one wing . . . Clerks of the Supreme and Common Pleas Courts," etc.; from Snow's History of Boston, in 1826, — "In the eastern wing are the offices of the Clerk of the Courts, rooms for the Judges and for the juries;" and from Bowen's Picture of Boston, 1829, the same statement.¹ There they remained until the completion, in 1836, of the new building on Court Street, now called "the old Court House," where the Supreme Judicial Court room, with the lobbies, etc., was on the second floor, and the Clerk's offices on the lower floor.² In September, 1838, the Supreme Judicial Court removed to the new Court House in Pemberton Square, where, with its Court rooms, lobbies, and offices, it occupies the first and second floors of the southwest corner of the building.

The last sitting of the Superior Court of Judicature held in 1774 was in Boston, 30 August, and the only Court held in any county in 1775 sat in Boston, in February.³ By an Act of 23 August, 1775, all offices, civil and military, were to cease and determine from and after 19 September, 1775.⁴ 1 May, 1776, there was a change ordered in the style of writs and processes, to the "Government and People of the Massachusetts Bay in New England," and to bear the date of the Christian era.⁵ A new arrangement of the Justices was made by order of the Council, 8 May, 1776.⁶

By an Act of 8 February, 1776,⁷ the Suffolk County Terms were to be held at Dedham and Braintree, Boston having been made "a

¹ Re-dedication, etc., pp. 101, 192.

² The corner stone was laid 28 September, 1838, and the Building was completed 20 December, 1836. It occupies, substantially, the site of the Court House of 1765-1769, above mentioned.

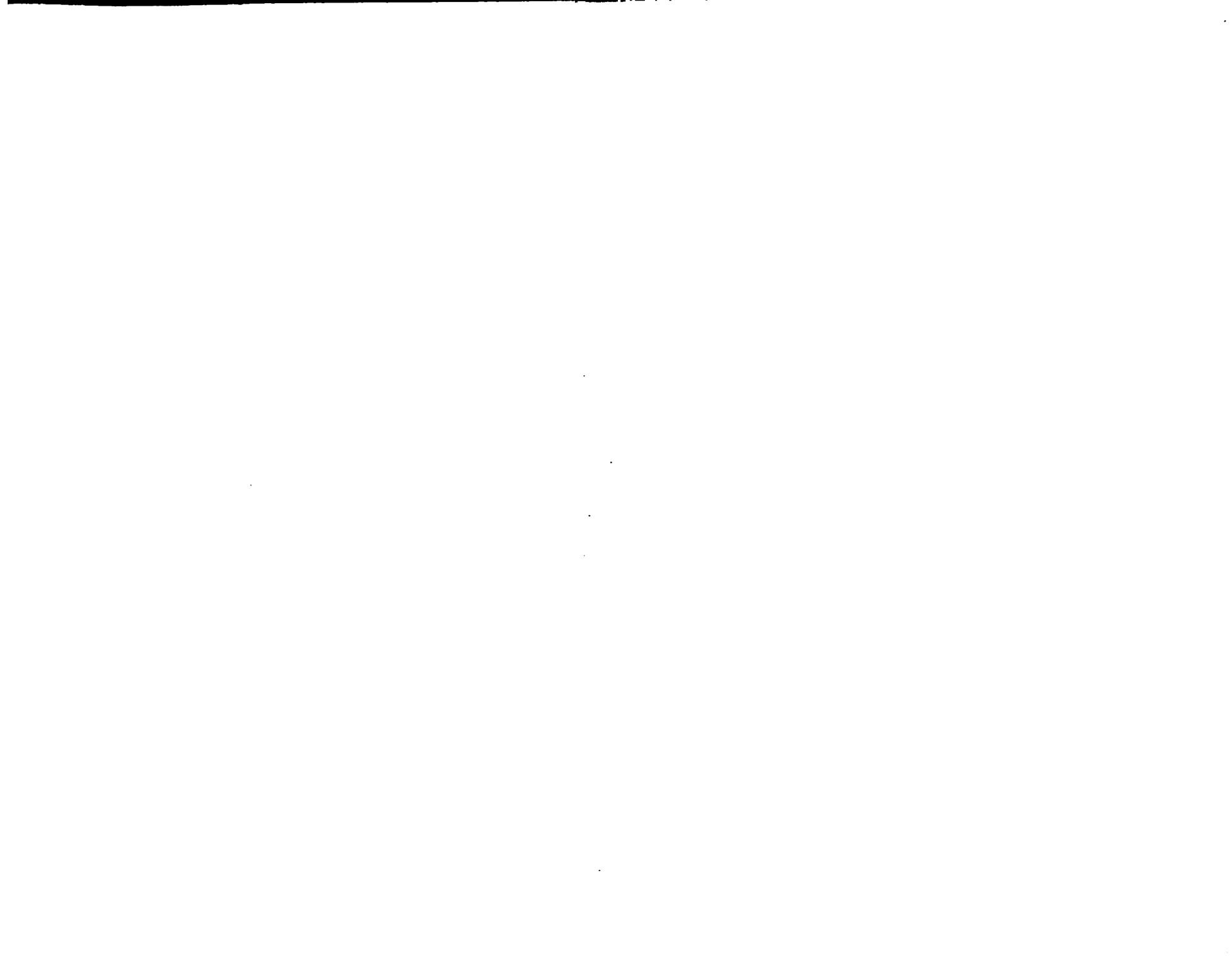
³ See Minute Books of the Superior Court of Judicature, Nos. 81, 98, 99, 100, 101, 102; and Catalogue of Records and Files in the office of the Clerk of the Supreme Judicial Court for the County of Suffolk, Boston, 1890, p. 94.

⁴ Province Laws, 1775-76, ch. 4, v. 490.

⁵ Ibid. 1775-76, ch. 22, v. 484, 588.

⁶ For a copy of the Order, etc., see ante, p. 12, note.

⁷ Province Laws, 1775-76, ch. 13, v. 486, 592.



garrison by the ministerial army and become a common receptacle for the enemies of America;" but 2 November, 1776,¹ this Act was repealed, "as the reasons assigned in said Act . . . had ceased since the passing of the same," and the Court returned to Boston.

The Records of the Superior Court of Judicature seem to have suffered little or nothing by the Fire of 1711. The series of volumes comprising them is complete, though what, if any, injuries were done to its Files is not easily determined. No regular series of Files before 1730 remains in the office, though many papers belonging to them have been found in the miscellaneous collection which has been described. The earliest volume of the Records of the Court of Assistants is not extant, though some of the original papers from which it was made up and many copies of such papers have been found in the same collection. It was different, however, in the later Fire of 1747. There are various gaps in the Records of the Terms in the different counties, shown by the Catalogue of Records, issued in 1890, which seem directly attributable to this Fire, as they are in the then more recent series of Records, and are between 1731 and 1747, while beyond that date they are full and unbroken.

As to the original papers and Files of Court, the Certificates show their condition in 1781. There are now, however, in the Clerk's office in Suffolk papers from 1730 down to 1800 which have kept their original file arrangement more or less completely; from the later date they are entire. At the time of the Fire the regular Records for the late preceding years probably had not been bound, but merely put together by Terms,² as is indicated in several ways, and so might easily have been dropped in the removal or left behind in the hurry and confusion. What this was is easily imagined; what actually happened appears in many ways. Mr. Whitmore gives extracts from the newspapers of the day,³ which bring it all vividly before us. From these it appears that the destruction on the second and upper floors was nearly complete,

¹ Province Laws 1776-77, ch. 10, v. 502, 677.

² One such volume still (1897) remains unbound.

³ The Boston Weekly News Letter of 10 December, the Boston Evening Post of 14 December, and the Boston Gazette or Weekly Journal of 15 December, 1747. (Bodleian Library, etc., pp. 57, 58, 100.)

while the books, papers, and records on the lower floor were mostly saved. The Memorial of Middlecott Cooke and Ezekiel Goldthwait, Clerks of the Court of General Sessions of the Peace, July, 1749, to the Court, setting forth their services in saving and subsequently sorting out its papers, shows how it fared with the Records of that Court which were on the lowest floor:—

"they took all possible pains to preserve the Publick Records and Files of the County then in their office, that in removing the same out of the Town house the Files of writs Executions & other Papers belonging to the County were most of 'em broke, & so Interniz'd that there was scarce a whole file of Papers together for neare Seventy or Eighty years past."

The Record of the Court of General Sessions concerning this matter is quoted by Mr. Whitmore (p. 175). The original Memorial, the order appointing a Committee "to take the said Memorial into Consideration and report to the Court," the Report of the Committee, and the action of the Court endorsed thereon, are still extant.¹

The Fires are not alone responsible for such losses as the Records may have suffered. The various vicissitudes through which they have passed in the course of two and a half centuries, referred to in my previous communication, are naturally and inevitably still more accountable. The Certificates charge some of this loss and confusion to the British soldiery when quartered here in Boston in Revolutionary times,—and considering their date, so few years after the events, when knowledge and memory were fresh, the charge must be considered to have had a substantial foundation. The papers themselves are also silent and effective witnesses,—grimed, powder-stained, worn and battered and frayed, with holes burnt by the cinders that dropped from pipes, creased and crumpled, and, when the work of restoration and arrangement took them in hand a few years ago, mixed in many cases in undistinguishable confusion and disorder.

When, in September, 1768, before the war broke out, the two British regiments were ordered to Boston, one pitched its tents on the Common, but the other was ordered to Faneuil Hall, and "the next day the Governor [Bernard] ordered the doors of the Town

¹ Suffolk Court File, case no. 6414.



House to be opened, except that of the Council Chamber; and such part were lodged there as Faneuil Hall rooms would not accommodate,"¹ though probably this occupation was but short. During the Siege the papers were exposed to greater and longer-continued dangers. General Howe's Proclamation, 14 March, 1776, refers to depredations in the Town House, and offers rewards for the conviction of any person "destroying the records and other public papers." Mr. Whitmore says,—

"Hardly any thing is on record in regard to the Town House during the Siege. It is stated that it was used as a barracks; certainly after the evacuation of the town, no complaint was made of any injury done to it by the troops."²

These Certificates confirm the fact of such occupation, and show its effect upon the Records. The injury was perhaps such that complaint or compensation would be unlikely; the mischief was probably not wanton, and possibly had some grounds of extenuation; soldiers under the circumstances would not be over scrupulous in extracting what comfort they could from their surroundings.

Perhaps equally damaging with fires, British soldiery, and the casualties of various necessary removals, was the neglect by a later generation, when these old papers, like valueless rubbish, were packed in chests and stored in unfit quarters, or deposited in public insecurity, where they were exposed for years to the depredations of the unscrupulous professional autograph collector and the unrestrained freedom of the legitimate, but careless and forgetful, user.

The present state of the Files and Records of the Supreme Judicial Court, and the extent of the collection which makes up the series of the Records of the highest Courts of the Colony, the Province, and the Commonwealth from that first session "aboard the *Arbella*," 28 March, 1629, to the present day, have been described elsewhere.³

¹ Hutchinson's History of the Province of Massachusetts Bay, II. 212.

² *Rededication, etc.*, p. 91.

³ Publications of this Society, II. 217-222.

The business of the Annual Meeting was then resumed, and the Report of the Council was presented and read by the CORRESPONDING SECRETARY.

REPORT OF THE COUNCIL.

In the performance of the duty of submitting a detailed Report of the doings of the Society during the past year, which is imposed upon the Council by the By-Laws, it would perhaps be natural to expect that a review of the condition of the finances of the Society should first engage our attention. Inasmuch, however, as the Treasurer is required to submit his Annual Statement directly to the Society, and as there has been no such change either in the general condition of the Treasury or in the character of the investments, as calls for special comment, unnecessary repetition will be avoided if this topic shall be disposed of by reference to the Statement which will be submitted by the Treasurer at this meeting. In thus disposing of this subject, however, the Council wish to congratulate the Society upon the signs of steady growth shown in the permanent Funds. Although they are not large in amount, it will be admitted by all that the assurance of a future to the Society depends upon the establishment of confidence in the care and preservation of these Funds.

The attendance at our Stated Meetings during the year bears witness to the continued interest of the members in our affairs. It was determined by the Council that the December Meeting should be in the nature of a Memorial in honor of the late President of the Society, Dr. Benjamin Apthorp Gould, and the exercises at that time were practically confined to the consideration of Resolutions prepared by a Committee for the occasion and to listening to addresses from different members of the Society adapted to the character of the Meeting. At each of the other Stated Meetings, however, papers were read, treating of a variety of topics and covering a wide field of time. These papers have all been put in type, and if to the pages which they occupy we add those containing the Transactions from January, 1895, to April, 1896, and the several Memoirs communicated to the Society during the year, we have a volume of four hundred and eighty-nine pages. The Parts containing the proceedings of our meetings

down to April, 1896, have already been distributed to members, and it is hoped that the completed volume will be ready for delivery within a few weeks. The preparation of the Index is all that is holding it back, and that is far enough along for us to speak with some sort of assurance of the time of its completion. It will be known as the Third volume of our Publications, being the second which is devoted to the Transactions of the Society.

Work has progressed during the summer in the preparation of the copy for the Second volume of the Publications, which was set aside for the Commissions of the Royal Governors of this Province and the Instructions sent to them for the conduct of their government. The Commissions have been in type for some time, but the work of preparation of the copy for the rest of the volume has been delayed through the necessity for a careful comparison of the Instructions to the several Governors, in order to avoid placing in type in the later Instructions sections where no verbal changes had taken place from those which had previously been given upon the same topic. The great care required to determine whether the language used in these voluminous documents was identical in the copies addressed to the different Governors has involved a protracted and tedious examination. This, however, has been finished, and there is no good reason why the Committee of Publication should not renew its work at an early day.

The study of these Royal Instructions has revealed certain omissions in the series presented to us by Mr. Gondell. Those which we possess consist mainly of the Instructions which were sent to the several Governors when they assumed charge of the government of the Province. These closely resembled each other in their general construction, being based upon a certain preconceived theory of how the Province ought to be governed, the main feature of which was the maintenance of the Royal authority on this side of the water. Supplemental Instructions were at different times sent to each of the Governors. These were called forth by the various exigencies arising from the condition of affairs and to meet the emergencies caused by the protracted conflict between the Governors and the House of Representatives. When the copies of the Instructions which are now in the hands of the Committee of Publication were prepared at the Public Record Office in London, no adequate search was made for these special

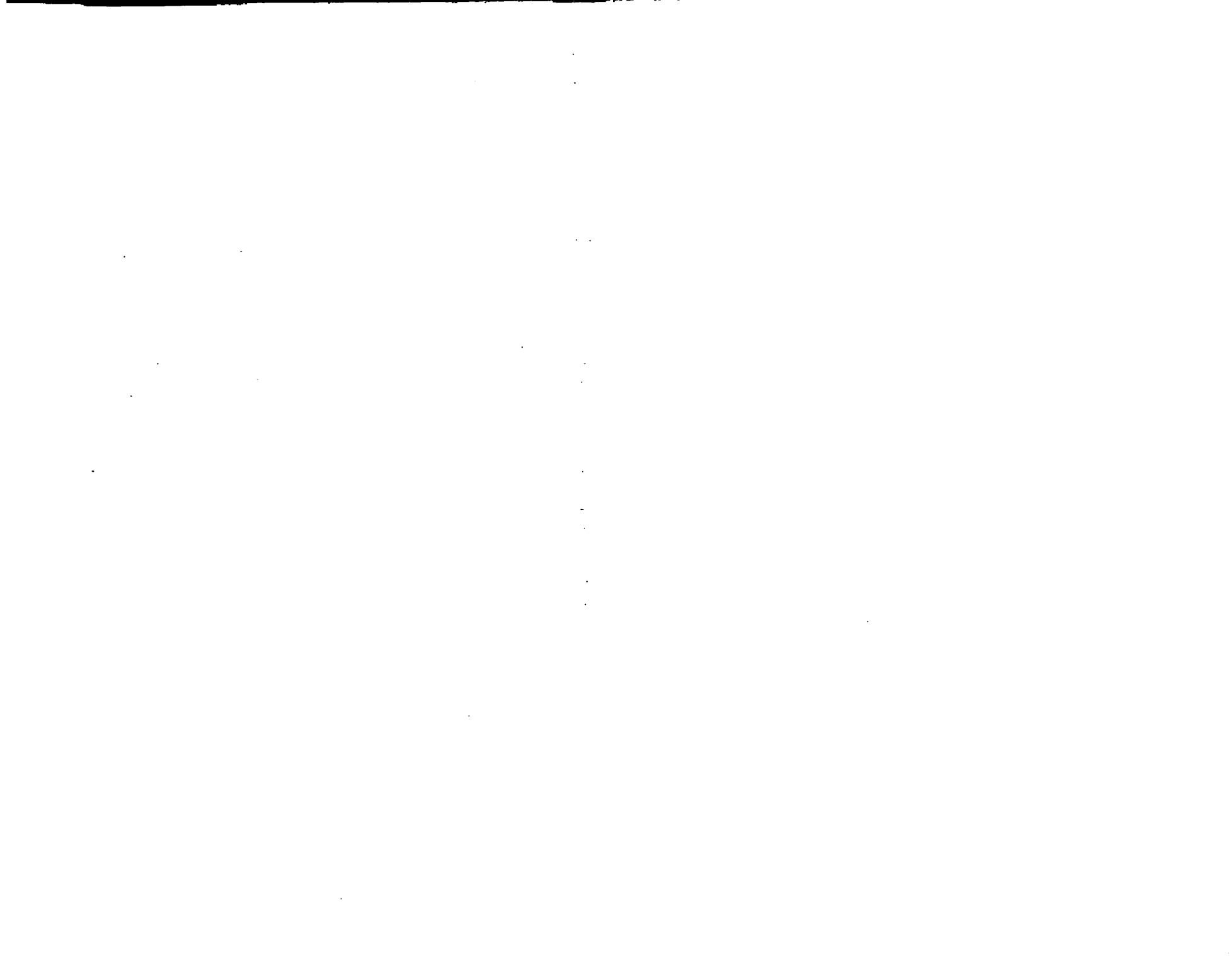
1897.]

REPORT OF THE COUNCIL.

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Instructions, and but few of them were transmitted from England. Whether they can all be found in the Record Office we do not know, but by means of an examination of the Massachusetts Archives, the Council Records, and the Journals of the House, and by references made in the published histories of the times we are able to establish the existence once of a number of documents of this character of which we have no copies. We can demonstrate the probable nature of the contents of most of these, and hence we feel sure that many of the missing Instructions are of great importance in their bearing upon contemporaneous events. In order that we may proceed in a systematic way in our efforts to make our work complete, it has been thought best to institute a thorough search for information concerning the Instructions among the documents and publications likely to aid us which are accessible on this side of the Atlantic. When we shall have collated all that can be procured here, we can lodge a specific order upon the searchers in the Public Record Office in Fetter Lane for certain named documents, and supplement this order with a request for any others that they may find. When the replies shall have been received, our work will be as complete as it is possible for us to expect under the circumstances, and although it may and probably will happen that we shall be obliged, in certain instances, to supply the place of Instructions known to have been sent by abstracts of their contents obtained from outside sources, these defects will only be such as are inherent in work of this sort, for which we shall not be responsible.

A few words may with propriety be said concerning the probable value of this publication for historical purposes. In a recent number of the American Historical Review a writer undertook to give a list of the published Commissions and Instructions to the Governors of the different Colonies and Provinces which were accessible for students. While it may be premised that the list is not complete, still it is worthy of note, that the compiler was only able to include of those in which we are interested Andros's Commission and Instructions as Governor of New England and Dudley's Instructions as Governor of the Massachusetts Bay. This would seem to be in itself a sufficient demonstration of the demand that exists for the execution of the work in which we are engaged.



If the Commissions had been uniform the publication of one would have served as a model for all the others. Such, however, is not the case. The phraseology of the different Commissions differs materially, and a study of the various changes which were from time to time made may reveal contemporaneous motives for their existence which have not heretofore been brought to light in consequence of the inherent difficulties which lay in the way of comparing these documents. The task will be relatively an easy one after the publication of this volume.

When we reflect upon the fact that for nearly three quarters of a century a continuous attempt was made to govern this Province through Instructions issued to the Royal Governors, and when in addition it is considered that some of these Instructions were conceived by the inhabitants of the Province to trespass upon the rights of self-government conferred by the Charter, we can understand the impossibility of writing the history of the Province without full knowledge of these Instructions. Inasmuch as they are nowhere to be found in print, the difficulty of obtaining the requisite knowledge for this purpose is obvious, and it will not perhaps be considered as stating the situation too strongly, if we should say that the history of the Province of the Massachusetts Bay for the first sixty years of its life remains to be written. The relation of the events which occurred during this period to the better known incidents which happened just before the Revolution, has never been adequately analyzed. A continuous conflict concerning these Instructions was carried on during these years. It was at times between the Governor and the Assembly, but generally between the Governor and the Representatives alone. It had an important bearing in the development of the spirit of resistance which led to the Revolution. The study of this conflict has been greatly hampered by the difficulty of access to the historical material which related to it. The publication of the volume which this Society will soon issue will place a large and important portion of this material within reach of historical students. We may rest assured that its advent will be welcomed, and that others will join with us in appreciation of the value of the gift received from Mr. Goodell which has enabled us to make this contribution to the historical resources of this Commonwealth.

1887.]

REPORT OF THE COUNCIL.

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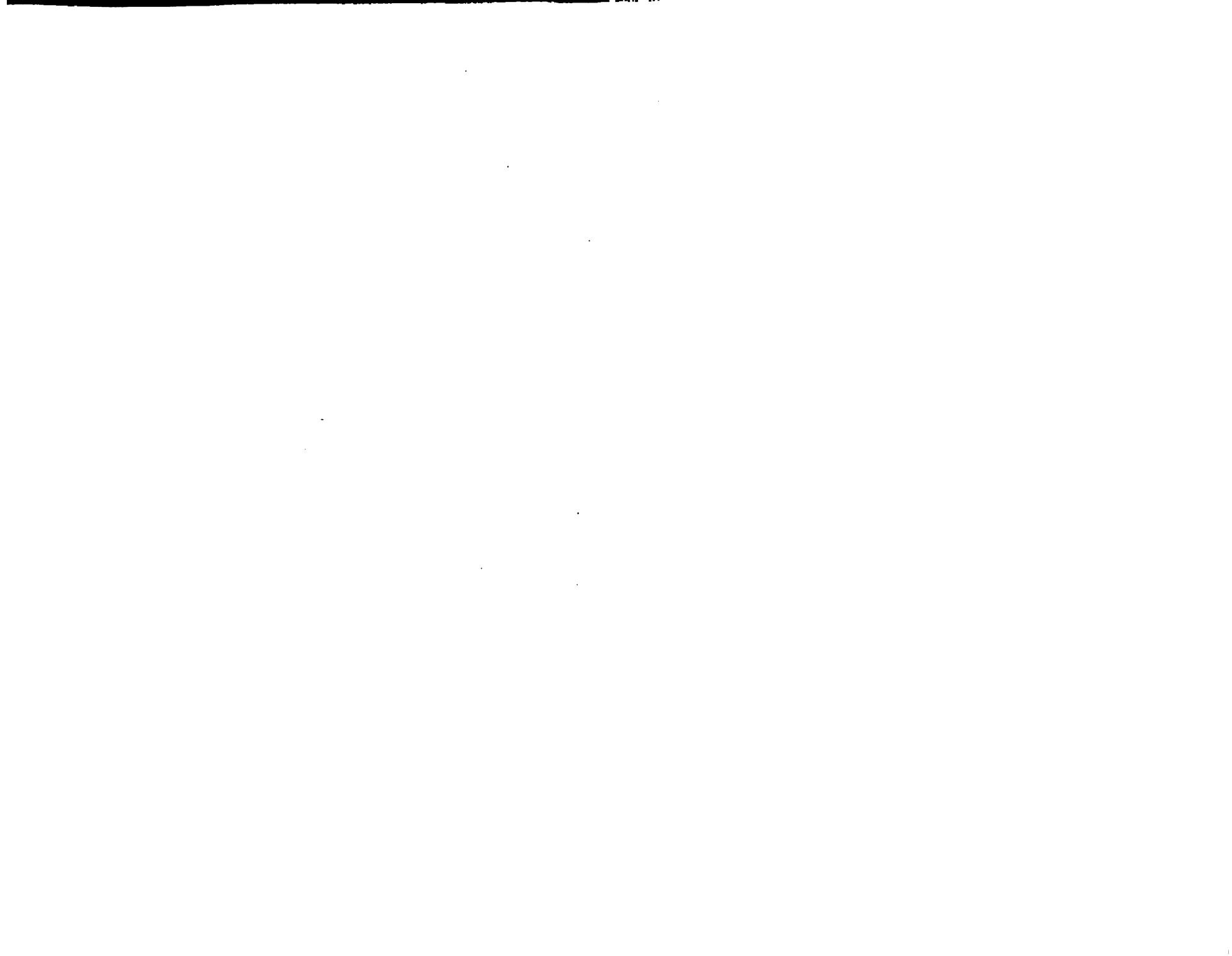
The following deaths have occurred during the year:—

BENJAMIN APTHORP GOULD.
FRANCIS AMASA WALKER.
GEORGE OTIS SMATTUCK.
DARWIN ERASTUS WARE.
JOHN LOWELL.
GEORGE MARTIN LANE.
GEORGE SULZEE HALE.

It will be seen that the mortality of the year has been unprecedented, not only in numbers but also in character, the distinction of the names included in the above list being so marked that the fact that any Society had suffered this loss from its Roll of Membership, in one year, would not fail to attract attention. Among those whose presence we miss to-day, two were closely connected with our executive force, and have largely contributed towards the development of the Society by their counsel and advice. One of these was our choice, from the organization of the Society down to the date of his death, for the highest office in our gift. The other, during the same period and continuously thereafter until his own death, was selected by us to fill the office next in rank to that held by the first. It will be conceded that it will be impossible for us to fully repair these losses, the accumulation of which within so brief a period has been a severe test of the vitality of the Society.

At the last Annual Meeting it was voted that the Chair appoint a Committee of five members with full powers to consider the subject of increasing the Permanent Funds of the Society, whereby provision might be made for an annual income sufficient to defray the cost of the Society's Publications, and to take such further action as they might deem expedient. At the February Meeting, President Wheelwright stated that Dr. Gould had prepared a list of those whom he proposed to appoint upon this Committee, and although the announcement of their appointment had not been actually made, it only remained, Mr. Wheelwright said, for him to name the Committee as drawn up by Dr. Gould, and he then added,—

"No more fitting monument to the memory of our late President could be erected by us than such a Fund as he proposed. Out of gratitude to him and in recognition of his eminent services, if for no other reason, every member of the Society should feel bound to contribute to it, in the measure of his ability."



At the same meeting the number of the Committee was increased to seven, of whom the President was made, *ex officio*, one. No member of this Society can have escaped knowledge that this Committee entered upon the performance of its work with zeal. As this work was not, in any way, placed under the control or supervision of the Council, the condition of the Fund which they have undertaken to collect must be ascertained from the Report of the Committee to the Society.

In conclusion the Council wish to convey the thanks of the Society to the American Academy of Arts and Sciences for the use of their Hall during the year for the Stated Meetings of the Society. So far as meetings of the Council are concerned, the same embarrassment has prevailed as heretofore, owing to our dependence upon others for a place in which to meet. In presenting this question to the consideration of the Meeting, the Council do not mean to suggest that it requires immediate action. It is, however, one of the standing needs of the Society, the remedy for which must be found in the future.

The Reports of the Treasurer and of the Auditing Committee were then submitted. They are as follows:—

REPORT OF THE TREASURER.

The By-Laws of the Society require of the Treasurer, at the Annual Meeting, a statement of the financial operations for the preceding year. In obedience to this requirement I have the honor to submit the following Report.

CASH ACCOUNT.

RECEIPTS.

Balance, 20 November, 1896	\$7.72
Admission Fees	300.00
Annual Assessments	810.00
Commissions of the Annual Assessment from Two Members	200.00
Interest	120.34
Sale of the Society's Publications	61.50
John Wilson and Son, Overcharge refunded	0.00
Withdrawing from Charlestown Five Cents Savings Bank . . .	<u>300.50</u> 1,500.42
	<u>\$1,507.14</u>

1897.]

REPORT OF THE TREASURER.

EXPENDITURES AND INVESTMENT.

University Press, Printing	\$111.00
A. W. Elson and Company, Steel Plate Printing	14.00
B. E. Miller, Steel Plate Printing	7.00
Clerical Services	45.75
John H. H. McNamara, mounting Photographs and Autographs of Members for the Society's Album	2.00
Miscellaneous Incidents	100.35
Deposited in Charlestown Five Cents Savings Bank: Commissions, Admission Fees, and Interest belonging to the Permanent Funds	979.40
Mortgage on improved Real Estate in Boston, @ 6%, principal and interest payable in gold coin	250.00
Interest in Adjustment	8.00
Balance on Deposit in Third National Bank of Boston, 16 November, 1897	<u>200.35</u>
	<u>\$1,507.14</u>

The Funds of the Society are invested as follows:—

\$2,500.00 in First Mortgages on improved property in Boston and Cambridge.
70.32 deposited in the Charlestown Five Cents Savings Bank.

TRIAL BALANCE.

DEBTS.

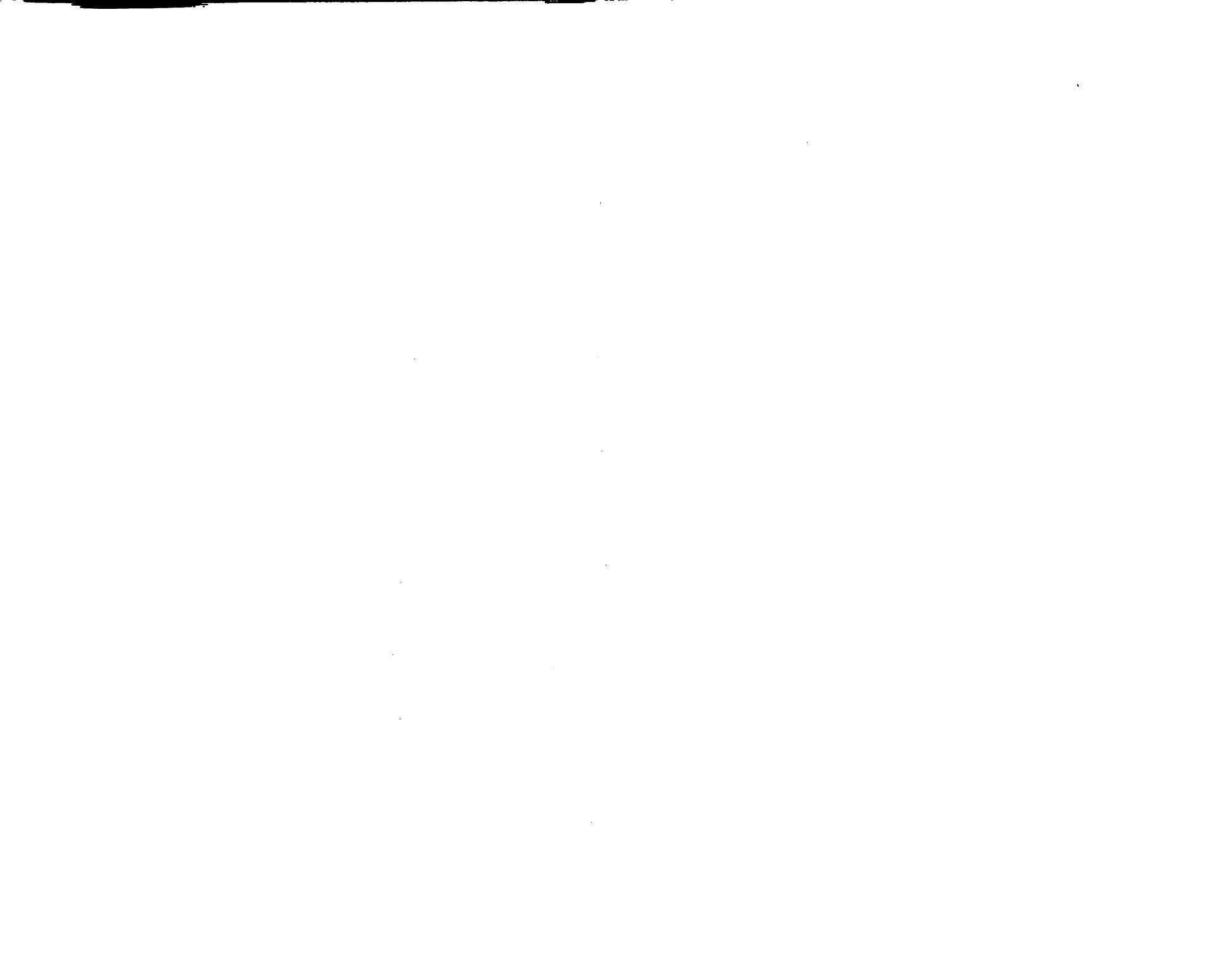
Cash	\$200.35
Mortgage	2,570.00
Charlestown Five Cents Savings Bank	<u>2,550.17</u>

CREDITS.

Income	\$447.18
Publication Fund	2,120.00
General Fund	<u>2,550.17</u>

HENRY H. EDGAR,
Treasurer.

Boston, 16 November, 1897.



REPORT OF THE AUDITING COMMITTEE.

The undersigned, a Committee appointed to examine the Accounts of the Treasurer of The Colonial Society of Massachusetts for the year ending 15 November, 1897, have attended to that duty, and report that they find them correctly kept and properly vouch'd; and that proper evidence of the investments and of the balance of cash on hand has been shown to us.

ELIOT C. CLARKE,
RICHARD M. SALTONSTALL,
Committee.

Boston, 15 November, 1897.

The PRESIDENT, as Chairman of the Committee appointed to consider the subject of increasing the Permanent Funds of the Society, made a brief statement, by which it appeared that of the Ten Thousand Dollars which the Committee has undertaken to raise \$6,870 had been already pledged.

The several Reports were accepted and referred to the Committee of Publication.

Mr. Justice LATHROP, Chairman of the Committee to nominate candidates for Officers for the ensuing year, stated that the Committee had named Mr. John Noble for the office of Corresponding Secretary, Mr. Davis having declined to be again a candidate for re-election. He then presented the following List; and, a ballot being taken, these gentlemen were unanimously elected:—

PRESIDENT.

EDWARD WHEELWRIGHT.

VICE-PRESIDENTS.

WILLIAM WATSON GOODWIN.
JAMES BRADLEY THAYER.

RECORDING SECRETARY.

HENRY WINCHESTER CUNNINGHAM.

CORRESPONDING SECRETARY.

JOHN NOBLE.

1897.] MINUTE ON THE RETIREMENT OF MR. DAVIS.

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TREASURER.

HENRY HERBERT EDES.

REGISTRAR.

HENRY ERNEST WOODS.

MEMBER OF THE COUNCIL FOR THREE YEARS.

RICHARD OLNEY.

Mr. NOBLE then offered the following Minute, which was unanimously adopted by a rising vote:—

No words are needed to show the regret with which the Society has learned of the declination by Mr. Davis of further service in the office of Corresponding Secretary, or the reluctance with which it has felt itself constrained to accept it.

One of the Founders of the Society and its Corresponding Secretary from the beginning, and as such a member of its Council, he has discharged the duties of the office with signal success and to universal acceptance. In losing him from the position which he has so ably filled the Society indulges the confident hope that his individual investigations and studies, the results of which, contributed in part to our Transactions, have added so much to the knowledge of early New England history and to the reputation of this Society, will, in consequence, find only enlarged opportunity and fuller scope.

The Society hereby expresses its sense of obligation to him for his invaluable services, and for its now well-assured success, due in no small measure to his devotion; and places upon its Records a vote of heartiest thanks to its first Corresponding Secretary,—Andrew McFarland Davis.¹

¹ At a Stated Meeting of the Council, held in Boston, 6 December, 1897, it was —

Resolved, That it is with great regret that the Council of The Colonial Society of Massachusetts accedes to the wish of Andrew McFarland Davis to retire from the Committee of Publication where, for five years, with ability and success, he has filled the position of Chairman, and of which his good taste, his independence of opinion and judgment, his scintillating criticism, his wide and various information, his many-sided knowledge and his indefatigable discharge of laborious duties, have made him an invaluable member whose place can scarcely be filled.

Voted, That the Council enter upon its Records an expression of its appreciation of Mr. Davis's services, and — not only for itself, but also on behalf of the Society which owes him so much — a vote of cordial thanks.

Mr. JAMES BRADLEY THAYER communicated a Memoir of Darwin Erastus Ware which he had been appointed to prepare for publication in the Transactions.

After the adjournment of the meeting Dinner was served. Mr. WHEELWRIGHT presided, and the Divine Blessing was invoked by the Rev. Dr. JOSEPH HENRY ALLEN. After dinner, upon the proposal of the Chair, the members rose and, in silence, drank to The Memory of Benjamin Apthorp Gould. While the company was still on its feet Mr. CHARLES SEDGWICK RACKEMANN said, "The King is dead. Long live the King." Gentlemen, I give you the health of Mr. President Wheelwright."

Mr. HENRY H. EDES then said:—

I have risen, Mr. President, not to make a speech but to propose a toast.

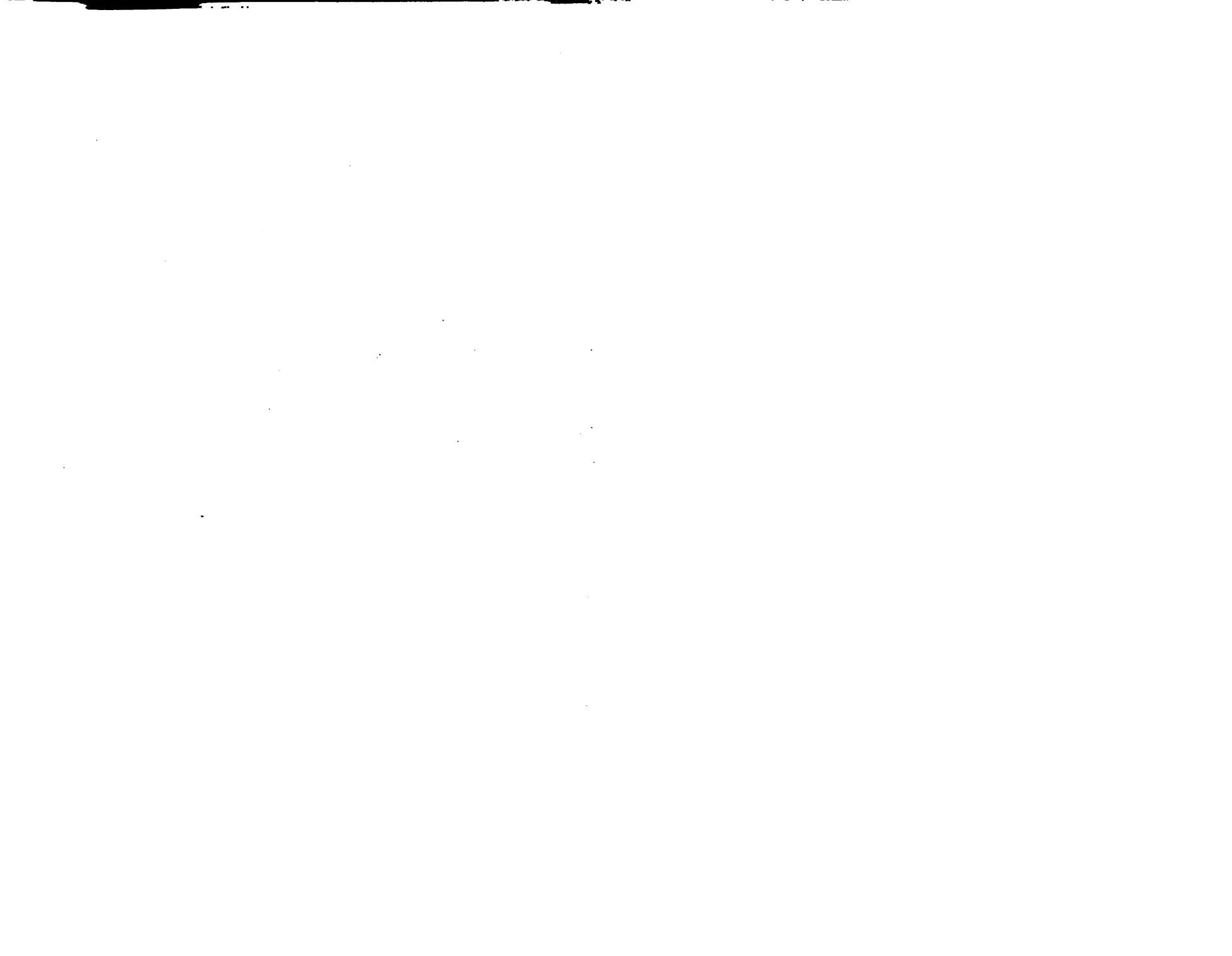
The Resolutions offered by Mr. Noble and adopted at the business meeting an hour ago, amid applause, attest the Society's appreciation of the value of the labors of our associate who has retired to-night from the office of Corresponding Secretary. I am not so presuming as to suppose that I can add anything to that felicitously expressed tribute to our friend and his work, but I do want to say a single word upon another side of his labors in our behalf. His contribution of learned papers to our proceedings constitutes only a part of what he has done for us. Faithful in his attendance upon the meetings of the Council, of which, for five years, he has been an honored member, our friend's services in that Board have been various and valuable. None has been more devoted than he to every interest of the Society; none has been more jealous than he of the Society's reputation to which he has himself contributed no small share.

On behalf of my colleagues in the Council as well as on my own behalf I give you, Mr. President, the health, happiness, and long life of Andrew McFarland Davis.

Speeches were made by Messrs. ANDREW MCFARLAND DAVIS, EDWARD G. PORTER, ABNER C. GOODELL, JR., GEORGE FOX TUCKER, and WILLIAM COOLIDGE LANE.

Mr. PORTER spoke at some length of the importance of an early completion of the Fund now being raised and of the purpose for which the income of it is needed. He mentioned, also, the decision of the Committee having the matter in hand to designate it as the GOULD MEMORIAL FUND, in honor of our late President, who had much at heart the liberal endowment of the Society in order that its work in the future might not be hampered and restricted, as it now is, by lack of a sufficient income.

Mr. LANE exhibited the original Charter of the Harvard Chapter of the fraternity of Phi Beta Kappa, which was restored to it this year after it had long been supposed to be lost. He also showed one of the first silver medals used by the Harvard Chapter.



MEMOIR
OF THE
HON. DARWIN ERASTUS WARE, A.M.
BY
JAMES BRADLEY THAYER.

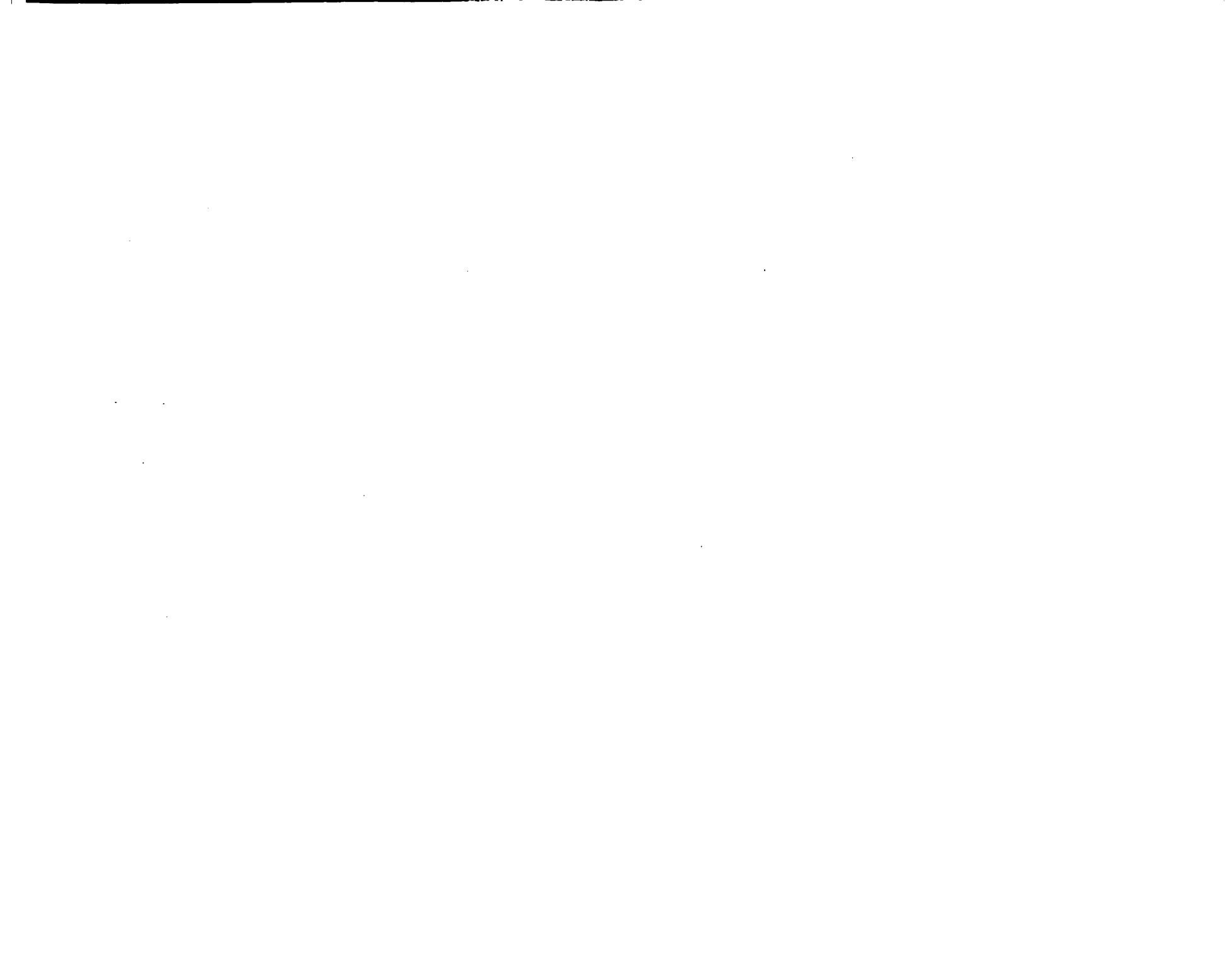
DARWIN ERASTUS WARE, elected a Resident Member of this Society on the twenty-fourth of January, 1898, was descended from Robert Ware, one of the early settlers of Dedham, Massachusetts, who received a grant of land there on the sixth of February, 1642-43. He was thus allied to the family of the distinguished divines, Henry Ware, father and son, who came from the same ancestor.

Mr. Ware was born in Salem on the eleventh of February, 1831, the son of Erastus and Clarissa-Dillaway (Wardwell) Ware. In 1833 his father bought a large farm in Marblehead, on the seashore and near the boundary line of Salem, and there he always afterwards lived. Ware attended school in Salem until he entered Harvard College in 1848. He graduated there with distinction in 1852, taught for a year in the school of Stephen M. Weld at Jamaica Plain, and then, in 1853, entered the Harvard Law School. He took his degree of LL.B. in 1855, but remained a member of the School until 1856.

After studying, for a time, in the office of Charles Theodore Russell in Boston, he began the practice of law in that city. Mr. Ware was associated with Horace L. Hazelton until 1860; then with John T. Morse, Jr., until 1872; then with George S. Hale until 1874; and then with Peleg W. Chandler and John E. Hudson until 1878. After that time Mr. Ware practised alone, having his office at No. 53 Devonshire Street, Boston. As a member of the Bar he was learned, honored, and successful.

During the years 1863, 1864, and 1865, Mr. Ware was a member of the Legislature of Massachusetts,—for the first year as a Representative from the town of Marblehead, and, for the second and

Darwin E. Ware,



MEMOIR
OF THE
LIFE OF
DARWIN ERASTUS WARE, A. M.
BY
JAMES D. THAYER.

DARWIN Erastus Ware, about the present Member of this Society on the active list of the Society, was descended from Robert Ware, one of the early settlers of Devens, Massachusetts, who received a grant of land there on the 1st of February, 1642-43. He was succeeded to the land by his distinguished son, Henry Ware, father and son, dwelling in the same street.

Mr. Ware was born in Salem, Massachusetts, on the 1st of February, 1815, the son of Erastus and Clarissa (Dyer) (née Newell) Ware. In 1833 his father bought a large farm in Walpole, on the southward and near the boundary line of Sudbury, and there he always afterwards lived. Mr. Ware attended schools in Sudbury until he entered Harvard College in 1835. He graduated there with distinction in 1832, having been in the school of Stephen M. Weld at Jamaica Plain, Boston, in 1831, and in the Harvard Law School. He took his LL.B. in 1835, but remained a member of the Faculty of Law.

Mr. Ware was, for a time, in the office of Charles Theodore Russel in Boston; he began the practice of law in the city. Mr. Ware was associated with Horace L. Hazelton in Boston from 1839 to 1841; then with John T. Morse, Jr., until 1872; then with George N. Loring, 1873; and then with Peleg W. Chandler, of Worcester, until his death in 1879. After that time Mr. Ware practiced alone in his office at No. 58 Devonshire Street, Boston. As a member of the Bar he was learned, honored, and popular.

During the years 1863, 1864, and 1865, Mr. Ware was a member of the Legislature of Massachusetts. In 1864 he was a Representative from the town of Marlboro, and in 1865 the second and

Darwin E. Ware,

*Portrait of the Colonial Society of Massachusetts
from a portrait given by*



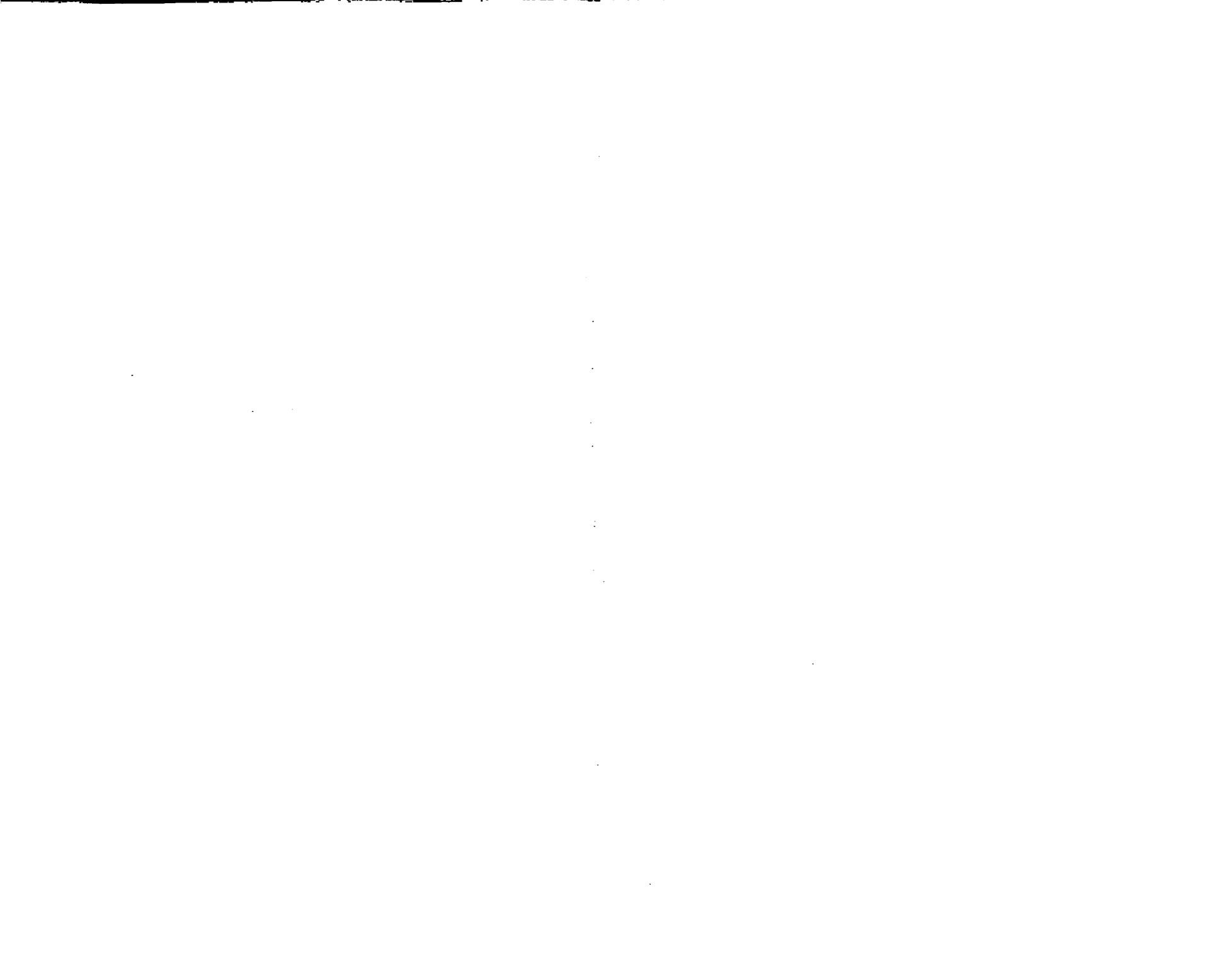
third years, as a member of the Senate from the district to which that town belonged. His legislative service was an honorable one, and he was chiefly instrumental in giving the election of the Overseers of Harvard College to the Alumni, — a reform of the utmost importance to the College.

In 1866 Ware was a member of a Commission for revising the United States' customs, revenue, and shipping laws. From 1866 to 1874 he was a member of the Massachusetts Board of Harbor Commissioners. From 1866 to 1878, and again from 1879 to 1881, he was a member of the Board of Overseers of Harvard College. He was at one time President of the Boston Civil Service Reform Association, and was the Treasurer and a Director of the Associated Charities of Boston from the year 1881 until his death. Of many other Societies, also, he was a valued member or officer.

On the twenty-sixth of May, 1868, Mr. Ware was married, in Washington, D. C., to Miss Adelaide Frances Dickey, of Veazie, Maine. He had but one child, a son, Richard Darwin Ware, of Boston, a graduate of Harvard College in the Class of 1890, and a member of the Bar, who succeeds to his father's business.

Of Mr. Ware's remarkable and interesting character, the writer of this sketch has already spoken at length, at the Stated Meeting of the Society in April, 1897. It has seemed best, therefore, to limit the present sketch to a simple record of the leading events in his life.

He died on the second of April, 1897. Of a vigorous physical constitution, he was in his usual strength when he last went to his office, on the morning of Tuesday, the thirtieth of March. Before the middle of that day he was attacked by violent pains which he supposed, at the time, to be symptoms of an epidemic then prevailing, known as the grippe, and he soon found it necessary to go home. A physician was summoned. The attack grew more severe, and soon it was pronounced a case of cerebro-spinal meningitis. It was impossible to arrest the disorder, and soon after midnight on the following Friday, all was over. And thus, suddenly and without any warning, our Society and this community lost one of their most valued members, — one who from the beginning had been a pillar of strength to those who had known and loved him.



DECEMBER MEETING, 1897.

A STATED MEETING of the Society was held in the Hall of the American Academy of Arts and Sciences on Wednesday, 15 December, 1897, at three o'clock in the afternoon, the PRESIDENT in the chair.

In the absence of the Recording Secretary, Mr. HENRY H. EDKES was chosen Secretary pro tempore.

In accordance with the suggestion of the President, in his Address at the Annual Meeting, and for the reasons then given, the tributes to the memory of those Members who died during the summer recess which their former associates wished to pay had been postponed until this meeting.

Mr. WILLIAM WATSON GOODWIN spoke feelingly of his friend, George Martin Lane, Pope Professor Emeritus of Latin in Harvard University. He referred to Professor Lane's graduation at Harvard, in 1846; to his thorough preparation abroad for his life work; to his study there of classic Philology; and to the fact that he was the first and only American scholar to prepare himself for the work of teaching at Cambridge by a systematic course of study at a German University since the memorable days, thirty years before, when Joseph G. Cogswell, Edward Everett, George Ticknor, and George Bancroft studied at Göttingen and returned to fill important offices in Harvard College,—three of them bearing the then strange title of Doctor of Philosophy.

Professor Goodwin said that Lane brought to Harvard all the best traditions of German scholarship, with no trace of pedantry or affectation. He spoke also of Lane's deep influence upon those who were his pupils, especially in the

1897.]

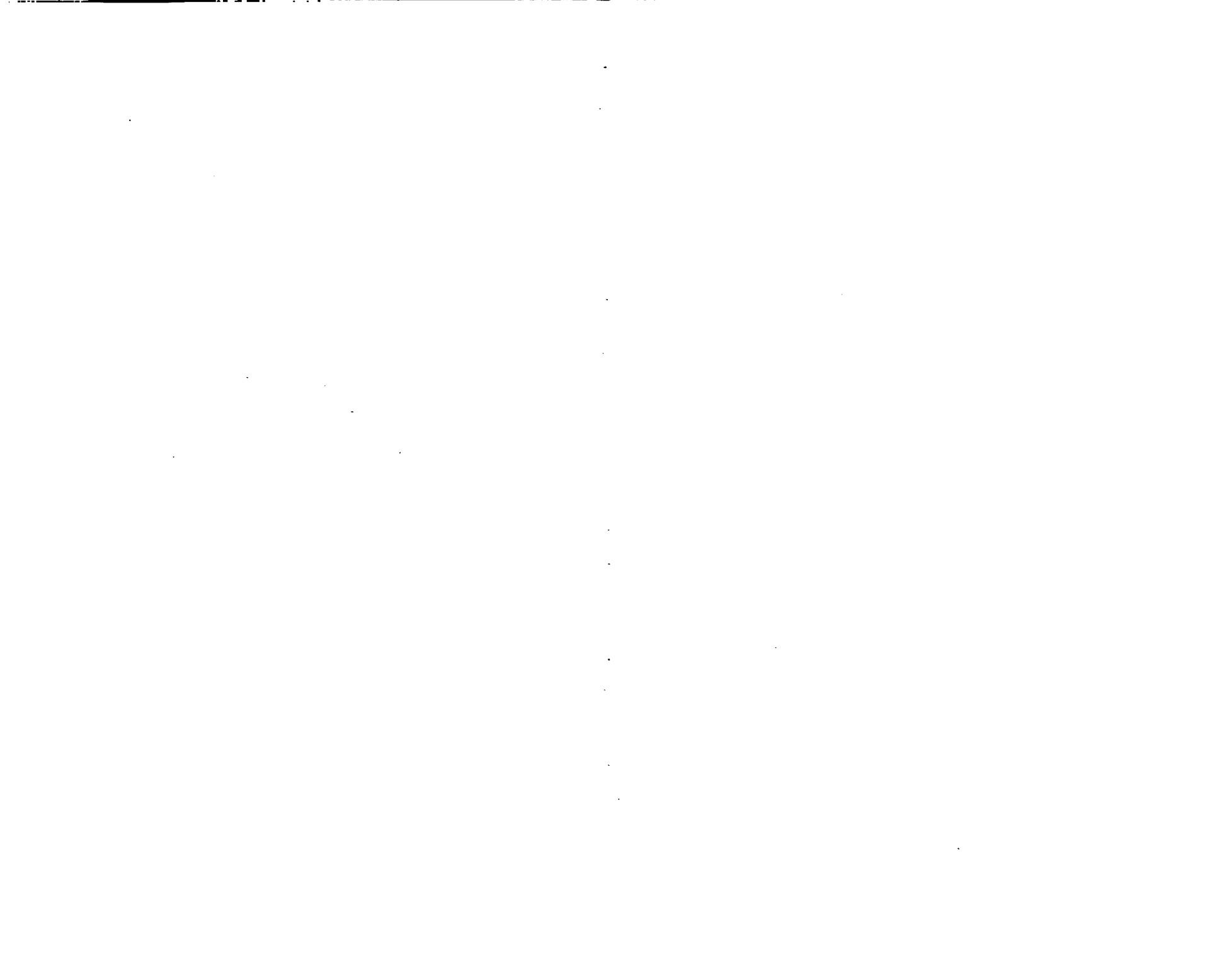
TRIBUTE TO JUDGE LOWELL.

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days when he had the whole instruction in Latin of the three upper classes. Continuing, he referred to Lane's strict and conscientious regard for accuracy, even in the smallest matters, which, he said, was one of his most striking characteristics as a scholar, and one of the most valuable lessons which he taught to his pupils. In closing, he referred to the fact that Professor Lane maintained, to the end of his life, his keen interest in the questions of classical scholarship to which he had devoted his best years, and said that with him and Professor Child Harvard University had bidden farewell to the last of the great teachers who came down to us from the first half of the century.

Mr. S. LOTHIROP THORNDIKE then said:—

Mr. PRESIDENT: The shortness of the time since I learned that to-day was to be partly devoted to the memory of those who have left us since our last meeting in the spring must be my apology for the crudeness and imperfection of anything which I may try to say about our dear friend, Judge Lowell. But perhaps no preparation ought to be necessary for at least bearing witness to the respect and esteem in which he was held by all who knew him, and the warm affection and regard felt for him by those who knew him best. That witness ought especially to be borne here, in this Colonial Society, in the Articles of Association of which his name stood the second, and of which he was, from its beginning, four years ago this very month, until his death, the senior Vice President. Indeed, no name could be more fit to hold high place in a society formed to commemorate our Colonial ancestors and to trace their blood and their influence in the men and the institutions of to-day. In the generations that have come and passed, from the time when Percival Lowell first settled in Newbury, in 1689, down to the days in which we live, the name of Lowell has always been one of prominence and distinction; and no one who hears me now, no one who has known John Lowell as he has gone in and out among the people of Boston, quietly, familiarly, steadfastly, for fifty years, will hesitate to say that he has maintained and carried forward the distinction of blood, of culture, and of character, which came to him as an inheritance.



Judge Lowell's life was not marked by any grand demonstration in the eye of the public. There were no feats of oratory or statesmanship. Although widely known as a lawyer, one does not find in his record any of the remarkable forensic exploits which spread the fame of a brilliant advocate throughout the English-speaking world. He will be known to the jurists and civilians of the future as the author of some volumes of lucid, learned, wise, and righteous judicial decisions. To us he stands for somewhat more than this, — he stands as a fit example of the simple integrity in matters public and private, of the sound sense, the intellectual breadth, the moral weight, which mark and set apart the few from the many.

Lowell was born in Boston, 18 November, 1824, graduated at Harvard in 1843, and spent the usual term at the Law School. Here he is mentioned by one of his classmates as devoting much time to Admiralty and Shipping, laying the foundation for that knowledge of maritime law in which he was afterwards so distinguished and so sound an authority. He took his law degree in 1845, was admitted a year later to the Suffolk Bar, and started at once upon his profession. He continued in practice for nineteen years, trying his cases with great ability and abundant learning.

When Judge Sprague resigned the office of United States District Judge, in 1865, Lowell's reputation was already such that a number of the leading members of the Bar at once named him for that office. Richard H. Dana, Jr., took the nomination in person to Washington, Senator Sumner earnestly advocated it, and President Lincoln promptly made the appointment.

Of Judge Lowell's career upon the Bench I have some hesitation in speaking, for my professional life has taken me but little into courts, and I never appeared as an advocate before him. I wish, however, that I could place upon our Records all the good things that were said about him by lawyers of four New England States, at the Bar meeting held in his memory; and I especially wish that our dear friend George Hale were still here to repeat to you what he said on that occasion. One thing was particularly noteworthy in the speeches, — a recognition of Lowell's remarkable skill in making his legal learning and acumen work out substantial justice in every case that came before him. Hale quoted Bishop Burnet's words about Sir Mathew Hale, —

"As great a lawyer as he was, he would never suffer the strictness of the law to prevail against conscience; as great a chancellor as he was, he would make use of all the niceties and subtleties in law when it tended to support right and equity."

When the resolutions were presented in court, Judge Gray, who received them, quoted William G. Russell's remark that —

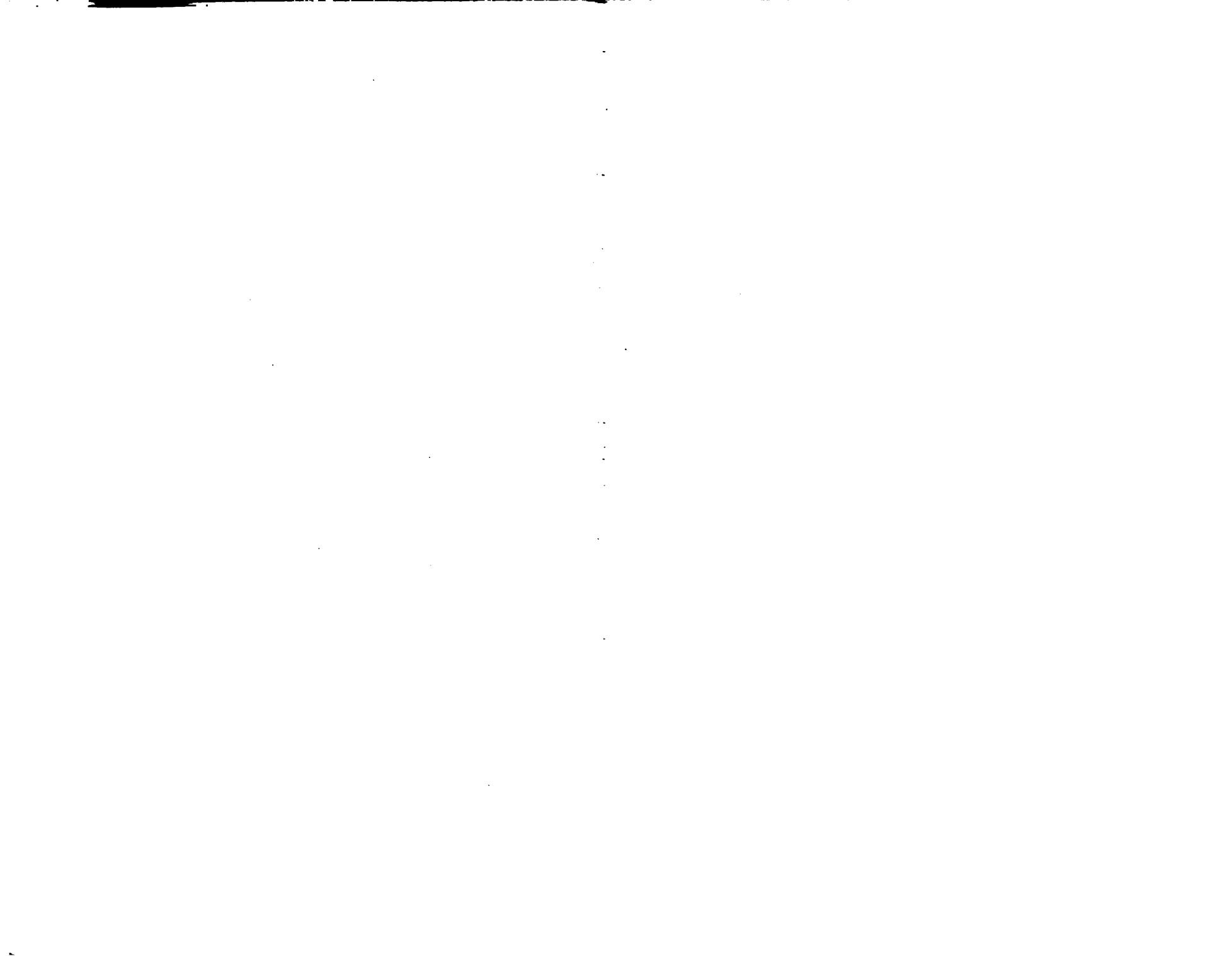
"Judge Lowell had a remarkable instinct in perceiving on which side lay the real justice of any case, and an equally remarkable ingenuity in showing that a decision in favor of that side was in accordance with the settled rules of law."

As I have already said, it was in Admiralty that Judge Lowell was especially fitted by study and experience to direct the trial of causes. He would have had no occasion, when he took his seat upon the Bench, for such a hope as was recently expressed, in the words of Tennyson, by an English judge on like occasion, —

"May there be no moaning of the bar
When I put out to sea."

I do not know whether he was practically an amateur sailor, but he tried his cases as if he had graduated from cabin boy to shipmaster. This nautical sense lent greatly to the literary and picturesque quality of his maritime decisions. As one of his friends said, — "They smell of the sea; you can almost smell the tar, almost hear the wind whistling through the rigging." I ought to remark in passing that the same literary, and sometimes picturesque, quality characterized all Judge Lowell's decisions, all his conversation, and all his modest speeches on whatever subject, — often enlivened by a fine and delicate humor.

I said that I felt hardly in position to speak of Judge Lowell upon the Bench. Of this statement I must make one modification. When the Bankrupt Law of 1867 was passed, I had the pleasure of being named by him as one of the Registers whom the law provided to assist the Judge in the performance of his administrative duties. This Bankrupt Law, by the way, was mainly draughted by Judge Lowell himself, and for it he drew from the great store of his study of the English statutes and of his experience in those of Massachusetts. I ought to say that this law was a far better statute as it came from the hands of Judge Lowell than after successive Congresses had amended it; and had it been allowed to



stand in its original shape, it might have served the Country to this time as usefully as its prototype, the Statute of Massachusetts, has served this Commonwealth. In Judge Lowell's administration of this law I saw him for ten years from week to week, almost from day to day; and the longer I knew him the more did my admiration increase for the constant patience and the untiring fidelity with which he strove in every case to arrive at real equity and to accomplish all practicable relief. A poor debtor or a poor creditor always had easy personal access to him. He listened to them as the Judges of Probate used to listen, paternally, to orphans and widows, and like them he was ready to advise, whenever the question was not such as to require the presence of an opposing party.

Perhaps I have said enough about Judge Lowell as a lawyer. One might go on indefinitely. Let me at least add what Whittier once wrote about another: —

" Skilled in its subtlest wiles he knew
And owned the higher ends of Law:
Still rose majestic on his view
The awful Shape the schoolman saw:

" Her home the heart of God; her voice
The choral harmonies whereby
The stars, through all their spheres, rejoice,
The rhythmic rule of earth and sky."

We sometimes hear it asserted that the Bar of the present day has deteriorated. Even within a day or two a tempest of discussion has been raised by the declaration of a learned judge that the practice of the law had ceased to be a profession and had become a mere business or trade. I do not believe this. I should be sorry to believe it. On the contrary, I believe that in all parts of our country where scholarship is of any account young men come to the Bar better equipped than ever before; that among lawyers in active practice the average of intellectual qualification, of scientific learning, and of general ability, is as high as ever; and that, with the simplification of procedure and the abandonment of antiquated technicality, cases are tried with more common-sense now than fifty years ago, and justice is, upon the whole, better wrought out. Still it is probably true that the most important and lucrative function of the lawyer of to-day consists in the

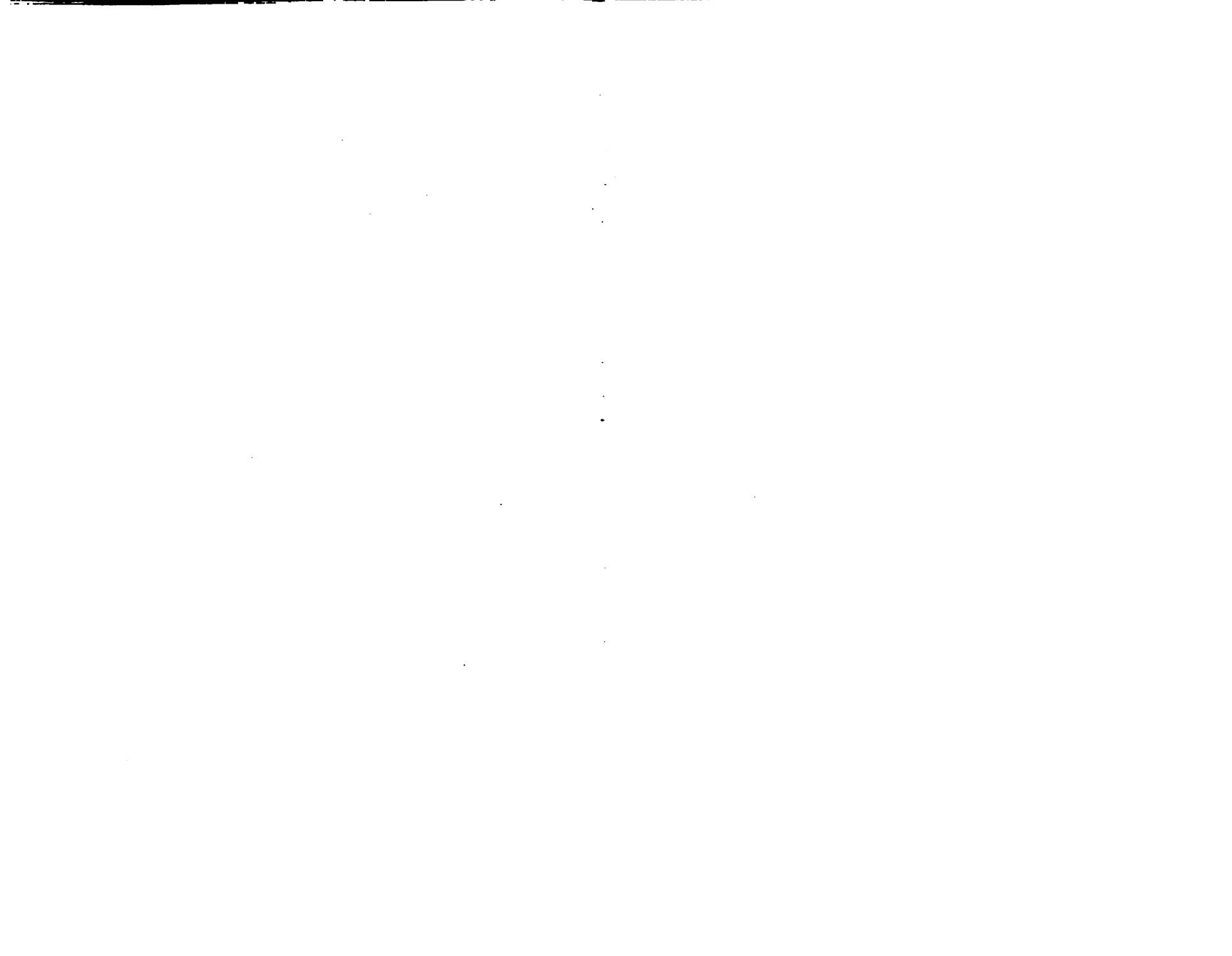
organizing and defending, or in the attacking, of great combinations of Capital or great combinations of Labor; and that his intimate association with the enterprise in hand has sometimes a mercantile aspect. The faculties he employs are the same as of old, but the conditions of his work change the atmosphere. *Cœlum non animum mutant.* But this modern atmosphere, if I am right in recognizing its existence, was never breathed by John Lowell. He was of too old a school. He never bore, either in his earlier or his later days at the Bar, the attitude of putting himself into partnership with the business in hand, but was content to be, almost judicially, the adviser of his client, the adviser of the Court, the adviser of the jury.

One sometimes hears the question asked by elderly persons, who remember the great names of two generations ago, "Who and where are now the great lawyers?" Perhaps, Mr. President, you would at once answer, "On the List of Honorary Members of The Colonial Society;" and the answer would be fair enough. Still, the question is significant. Perhaps the true answer is that there are fifty great lawyers now, where there were five of old; and that no one, as of old, "sticks fiery out indeed" in comparison with others. I cannot but think that in the old days there were certain men who stood in a different relation to their clients, to the public, and to their brethren of the Bar, — in a position a little apart from and above the rest, — which difference of kind as well as of degree does not exist now. To these men of an elder day, as I remember them, I always seemed to find in John Lowell a certain relationship.

In a profession happily not allied to the law the Germans speak of Mendelssohn — who had stronger birthmarks of descent from the great composers of an earlier generation than have most of the noted musicians of to-day — as one of the *dw̄yava*. So we may remember John Lowell, — if not one of the heroes, at least one of the sons of the heroes.

Mr. PHILIP H. SEARS paid the following tribute to the memory of his friend and classmate: —

MR. PRESIDENT: I should not say anything on this occasion if I had not understood that the speaking to-day was to be wholly



informal and not requiring preparation. Others will speak more at large. In what I have to say of George S. Hale I shall confine myself mainly to one point, namely, — the character and influence of his professional practice.

When I was a student of law in the office of the late Hon. Charles G. Loring of Boston I heard many conversations between him and the late Judge Benjamin R. Curtis upon the importance, and the means, of maintaining the high character for integrity, honor, and fair dealing of the legal profession in Boston, and upon the necessity of frowning down any appearance of questionable practices at the Bar. These two gentlemen were then leaders of the Boston Bar and maintained effectively in their day its high character.

At a somewhat later time there came to the Suffolk Bar from other Counties and other States practitioners of a different kind; but still the high character of the Bar in Boston was well maintained by the example and influence of such leading lawyers as Sidney Bartlett, Richard H. Dana, Francis E. Parker, William G. Russell, Charles Theodore Russell, Judge Hoar, our late associates Judge Lowell, George O. Shattuck, George S. Hale, and Darwin E. Ware, and others, not to mention any now living. All the men whom I have named were graduates of Harvard College and had had their characters developed under the influences of that Institution and under the ministrations of such men as Henry Ware and James Walker; and all had practically taken for their motto in life the motto of the College itself, — "Veritas." Among these lawyers the influence of the example of Mr. Hale — especially in the later years of his life — upon the young men coming in great numbers annually to this Bar was by no means the least.

I remember very well the trial of a case in the Supreme Judicial Court for Suffolk in which Mr. Hale was Counsel on one side and Darwin E. Ware on the other side, and in which I was summoned as a witness by both sides. I watched the trial from beginning to end and was impressed by the absolute fairness shown by the Counsel on both sides throughout the trial. What Mr. Hale showed in that case he showed in his practice generally, and its influence upon the Bar cannot be over-estimated.

The high character of the Boston Bar has been, and is to-day, a controlling factor in the high civilization of Massachusetts, and a

most powerful influence in elevating and sustaining the civilization of the whole country. In my opinion the maintenance of our national character and civilization depends more upon the members of the legal profession than upon any other men or agency whatever.

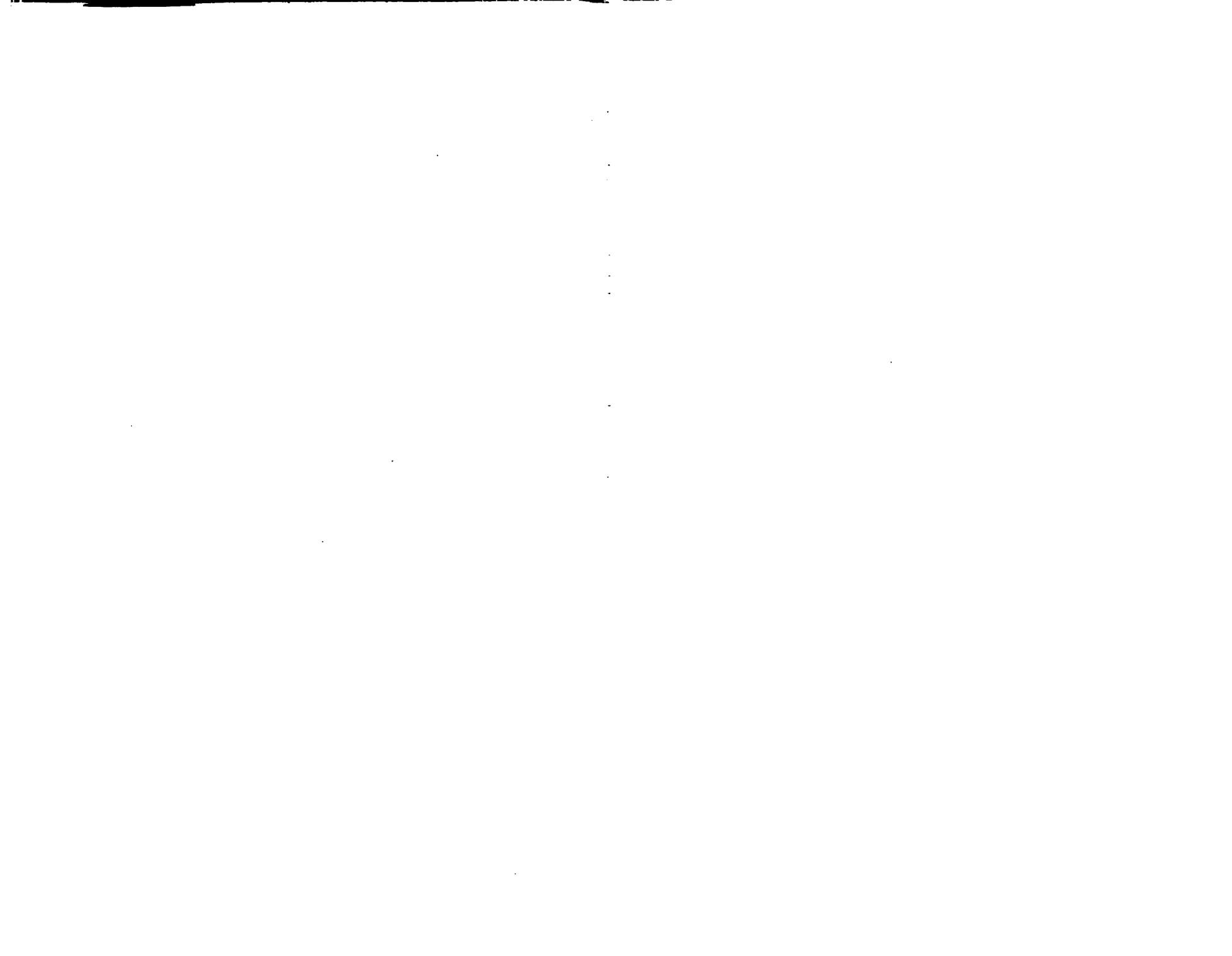
I ought to say further that Mr. Hale held his legal abilities and acquirements as a trust for the good of humanity, and therefore he was always ready to render gratuitous service to any important educational, charitable, or philanthropic cause that applied to him for aid.

Mr. Hale was a member of the Harvard Class of 1844 which has always been noted for its strong Class feeling and for the friendships prevailing among its members. This feeling was cherished by none more highly than by him. He always attended the meetings of the Class, and contributed his share in awakening those enthusiastic emotions and sentiments always aroused on such occasions and in perpetuating those friendships which never grow cold.

Mr. JOHN NOBLE followed Mr. Sears, in these words: —

Much as we feel in every way the loss of our late associate George S. Hale, it is perhaps at a time like this that we realize it with especial vividness. We miss the ever ready tribute which he was wont to bear, with such grace and delicacy, to the memory of those whose vacant places appealed to us as we again came together. No one who has heard him speak on such occasions, or at the meetings of the Bar, can forget the just appreciation, the calm judgment, the scholarly felicity, and the fitting expression so characteristic of all he said. The last time, I think, when he thus spoke, was at the meeting of the Bar, last summer, in the United States Court, on the death of Judge Lowell. To-day, we bring our tribute to him and to the one of whom he then spoke, — our late associate and our first Vice-President.

This is not the time to attempt to speak with any fulness of such a career as that of Judge Lowell, — one of service in so many capacities and identified with so many interests. I can but touch here and there upon a few out of many characteristics, and leave it to your memories, in that freshness of recollection which



death always brings, to fill the gaps. What he was to this Society we all know, — and what the loss his death has brought to us.

Judge Lowell's public services were many and most important. A judge in the Federal Courts for nearly twenty years, his decisions have become a part of the law of the land, — well grounded, sound in judgment, impartial, keen and clear. Full of sturdy common-sense, independent, of absolute moral integrity, with the courage of his convictions, he found — as was once said of his decisions — the established law, as he construed the authorities, coincident with justice as he understood it. Learned not only in the law, but in the workings of human nature and in the eternal principles of right, he filled his high place with honor and distinction.

Upon his retirement from the Bench, Judge Lowell resumed the practice of law, and, at his death, left behind him a reputation as a lawyer not inferior to that which he had gained as a judge. Indeed, he may well have been considered the leader of the Boston Bar.

Of the Bar Association of Boston he was one of the leading members. Vice President for two years, President for three, a member of its Council from the time of his admission to his death, he did much in shaping its policy and guiding its administration. Not among the least of his services were those before the Legislature in the hearings touching amendments of existing laws or new legislation. As a citizen, he was full of public spirit, alive to every issue of the day, ready to take his part and to give the weight of his influence and service whenever he felt that right and propriety demanded it and the public welfare would be promoted by his presence or by his voice.

For two terms he was a member of the Board of Overseers of Harvard University, where his father was, for forty years, a member of the Corporation; and, had he been willing to accede to the earnest wishes of the College and its graduates, his service would have been indefinitely prolonged.

The ancestral distinction of his family lost nothing at his hands, and he, with others of this generation, well sustained that often weighty burden, — the honor and responsibility of an illustrious name.

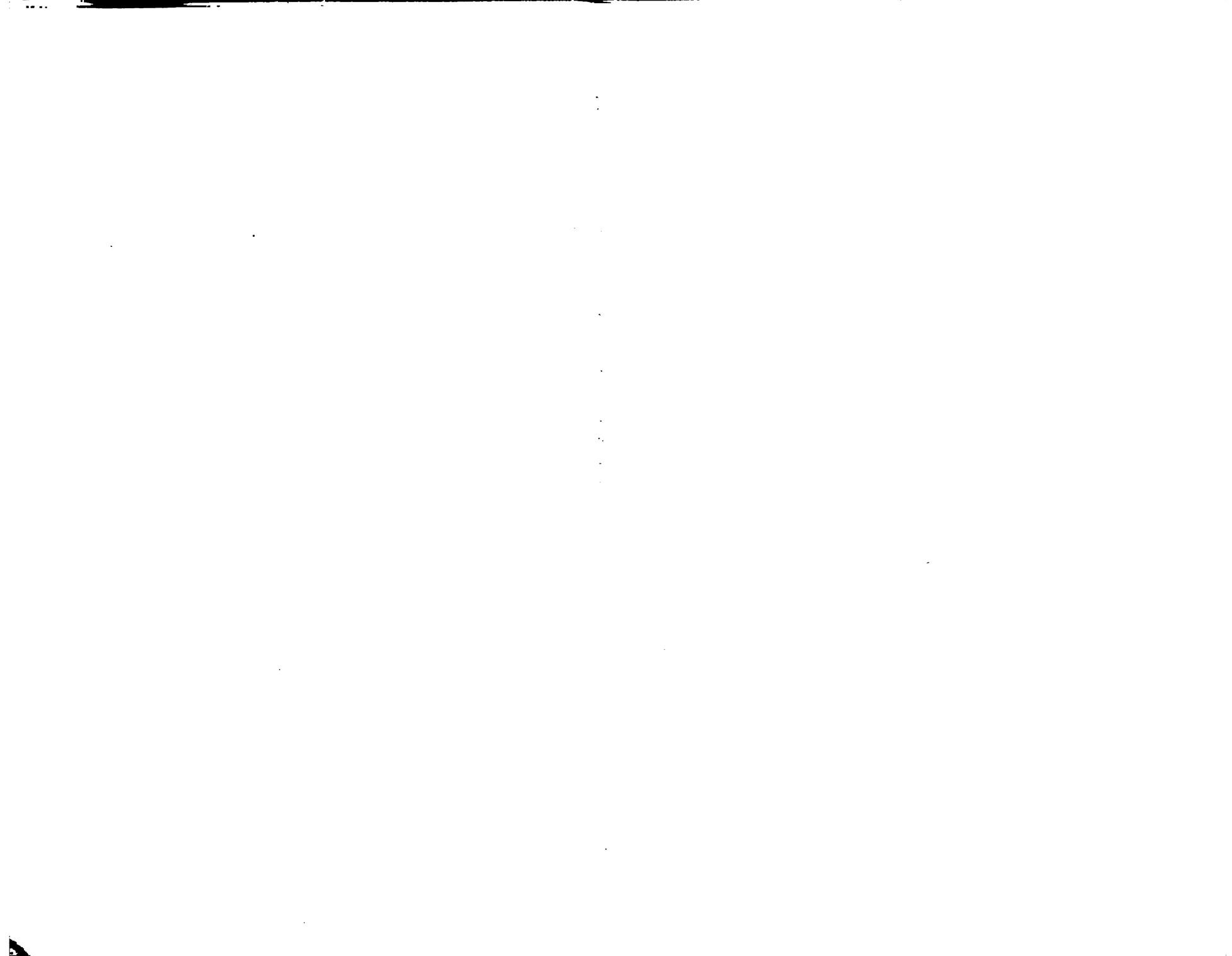
Mr. SAMUEL JOHNSON spoke of his long acquaintance with Judge Lowell, which dated from their school days, and remarked upon his extreme conscientiousness. He also cited some interesting and characteristic incidents in the later life of our associate which illustrated his exalted sense of justice and honor.

The Rev. EDWARD G. PORTER, having been called upon, said: —

MR. PRESIDENT: It is not often that we can record a visit from a descendant of a British officer known to have been in action at Lexington, Concord, and Bunker Hill. Twice this has happened to me in former years, and now a third case can be reported.

In the month of September last, a letter from Commander Goodrich of the Naval War College at Newport informed me that Lieutenant-General George Digby Barker, C. B., Governor of Bermuda, was then in Newport and would shortly come to Boston, hoping to see the places once familiar to his grandfather, Lieutenant John Barker, who was stationed here from 1774 till 1776 as an officer of the Fourth, or King's Own, regiment. Accordingly, I made an appointment to meet General Barker, and I soon found him to be unusually well informed in regard to all Revolutionary events, though he had never been here before. I confessed my surprise that such a hale and vigorous gentleman was only the grandson of a man who fought here so long ago, but he told me that his grandfather obtained his commission at a very early age and was but a youth when he came out to America. And, indeed, by a little calculation of years, one can see how it is quite possible.

General Barker was accompanied by his aide-de-camp, Lieutenant H. E. Platt, who went about with us to most of the places. We visited the Old South, the Old Town House, and Faneuil Hall, and then went over to Bunker Hill. The day was uncommonly fine and the greensward on the embankments seemed as fresh as in June. We stood for some time on the upper corners, studying the situation, laying out the line of the intrenchments, and, by the aid of a map, locating the place of the attack.



With the trained eye of an engineer, the General soon comprehended the various movements of the battle and made several entries in his note-book.

I then inquired whether our guest cared to undergo the fatigue of ascending the Monument, fearing that, as there was no "lift," he might consider it too formidable a task. But he assured me he was quite equal to it, and said he must certainly go to the top. So we entered our names and slowly proceeded, stopping at each of the narrow interstices to get the ever-widening view. We were amply rewarded, for at the top, as nowhere else, we could see the whole area covered by the hostile armies, from Dorchester Heights and Roxbury around by Cambridge and Medford, while Copp's Hill and Molton's Point and the two rivers were immediately below us.

The tide being high, General Barker naturally inquired why his "people" did not send the ships up the Mystic, and prevent the formation of the line at the rail-fence. He was soon satisfied when told that the fine broad river was largely mud flats at low water. He then asked me why General Gage failed to occupy Charlestown Neck, and so cut off Prescott's retreat. I told him of the discussion on that point in Gage's Council of War, and of the strong, though ineffectual, arguments that were presented in favor of the plan. Here our guest gave his unqualified opinion that that was the thing to have done.

The next day General Barker visited Lexington and Concord under the escort of our associate Mr. Theodore F. Dwight of Kendal Green. He also inspected our Public Library, Harvard University, and the United States Arsenal; and on leaving us for Bermuda, he sent grateful expressions of the rare pleasure which this visit had afforded him.

In this connection I may refer to the Diary of a British Officer in Boston in 1775, which was published, with an introduction by the late Richard H. Dana, Jr., in the Atlantic Monthly for April and May 1877. Mr. Dana told how the manuscript had come into the hands of his daughter bearing no signature, but giving evidence that it was written by a Lieutenant in the Light Infantry company of the Fourth regiment. Careful investigation reduced the list of possible authors, they thought, to two, Lieutenants Thorne and Hamilton, both of the Fourth. But a year or

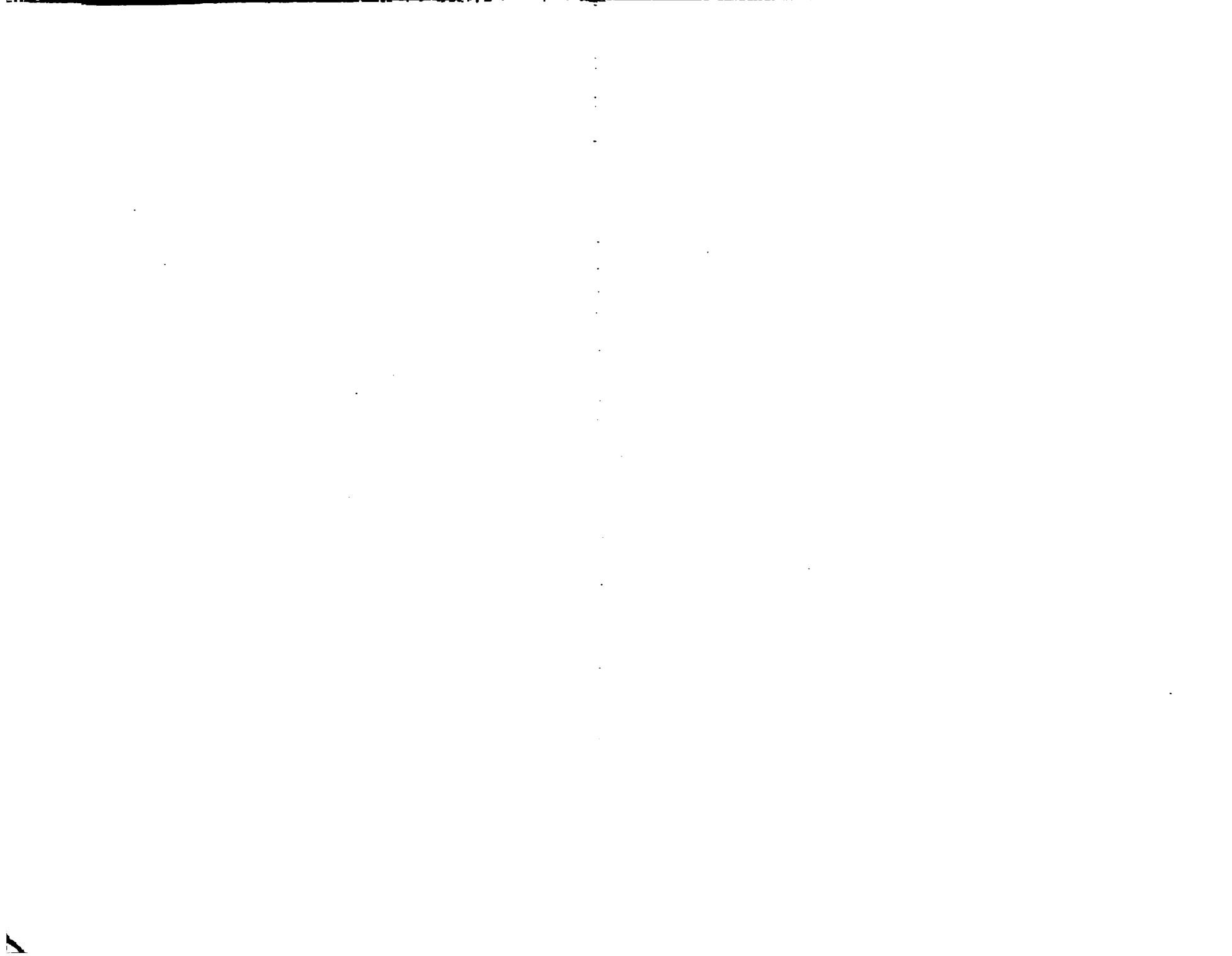
two later Miss Dana applied to the British War Office, and obtained information which left very little doubt that the writer of the Diary was Lieutenant John Barker of the same, King's Own, regiment, — the grandfather of our recent guest. Thorne and Hamilton were ruled out, because it was found that they were not in the Light Infantry company as the writer certainly was. He could not have been an ensign, as ensigns were not attached to the Light companies. Gould and Barker were the lieutenants of Captain Balfour's company in April, May, and June, 1775, and Balfour, who is mentioned in the Diary, commanded the Light company of the Fourth. Gould was wounded and taken prisoner on the nineteenth of April.¹

It is not quite clear how Lieutenant Knight (who was killed) came to be in the expedition to Concord, as he did not belong to the flank companies; but subalterns were liable to be transferred from one company to another by order of the regimental commander; and, as Gould appears to have been in command of the Light company of the Forty-Third that day, perhaps Knight was ordered to take his place in the Fourth. The best men from the whole regiment were selected for the Light company, and to be in that or in the Grenadiers was a special distinction. Lieutenant Browne is excluded from the authorship of the Diary, as he was in the Grenadiers.

Much credit is due Miss Dana for her enterprise in securing this Diary and in ascertaining its authorship. In the winter of 1875-76, she attended a class in American history conducted by Mr. Hale, who urged upon the members the possibility of so utilizing the Centennial enthusiasm as to bring to light original documents that might be lying about in private families utterly forgotten. The Siege of Boston, he said, needed further illustration, and especially from British sources, which had yielded us very little as yet. Miss Dana mentioned this to her cousin, Miss Daggett, of New London, who chanced to be visiting her, and who was one of a committee to collect relics for the Philadelphia Exhibition. On her return, she called upon two ladies,² the daughters of General Burbeck, an artillery officer of the Revolution. They said they

¹ His name, by the way, was Edward Thoroton Gould, not Thornton, as it is sometimes printed. Mr. Scull speaks of him and his fellow officers in *The Evelyns in America*.

² Miss Dana states that Miss Daggett's call was upon only one of General Burbeck's daughters, — Miss Charlotte Augusta Burbeck.



had sent all their father's papers to Colonel Aaa Bird Gardiner of West Point, who was writing a history of the American Artillery. They had nothing left, they said, but an old manuscript which was found among their father's papers and thrown aside as having no connection with him. This they allowed Miss Daggett to see and to forward to her cousin for inspection. It proved to be the very thing that was wanted, and gave great delight to Miss Dana and Mr. Hale, who, with the owner's consent, offered it for publication. Mr. Howells, the editor of the Atlantic, accepted it for the following year with the privilege of eliminating such portions as he considered unimportant.

Miss Dana now purchased the Diary and prepared some explanatory notes. She endeavored to learn more about the writer, whom she then supposed to be Robert Willmott, as that name was written upon the document; but she soon found that Willmott was an American officer, while the Diarist was in the King's Own regiment and in the Light Infantry company. An examination of the British Army Lists, which could then be found only at the Astor Library, showed that Barker was transferred, 16 January, 1776, to the Tenth as Captain. The Diary does not mention this, and the inference was that he was not the writer, though it was noticed that there were no entries between 20 December, 1775, and 2 March, 1776.

The manuscript was also deficient in having no account of the expedition to Lexington and Concord. The only explanation of this was that the writer was too busy to describe it. A closer inspection, however, showed that the Diary was paged in tiny figures, so small and faded that they had been overlooked. Four pages (two sheets) were thus found to be missing. Inquiry was made of Miss Burbeck, who replied that she had nothing more. Miss Dana then wrote to Colonel Gardiner, asking if by any possibility the missing leaves had come to him among the Burbeck papers. To her great joy they were found and returned to her, bringing the longed-for narrative of the nineteenth of April, — the fullest and most important part of the whole Diary.

This was all that was known when the document was published in 1877. Colonel Gardiner, however, suggested that it might have been lost by the writer and captured by Willmott at the evacuation of Philadelphia. By the advice of Mr. Samuel A. Drake, application was made through our minister, Mr. Pierrepont, to the Right

Hon. Gathorne Hardy, Secretary of State for War, for information regarding Lieutenants Thorne and Hamilton. The reply was that they were neither of them in the Light Infantry company. Our friend now seemed to be more at sea than ever, but she was determined not to give up the search, and so she prepared a list of eight definite questions and sent them to the War Office for answers. After considerable delay, caused by their being sent to the King's Own regiment, then stationed at Gibraltar, the Office sent her very courteously two sets of answers, — one from the Regimental, the other from the War Office, records. From these answers she constructed the theory that Lieutenant John Barker must have been the writer of the Diary. The fact that he was transferred to the Tenth in January was no objection, as the entries made no mention of the Fourth after that date; and the long blank alluded to was probably caused by his new duties as Captain, leaving him no time for writing. Barker's father died that same month of January, though he does not allude to it; but news travelled slowly in those days and the items are all very fragmentary toward the close of the Diary, which ends at Halifax 20 April, 1776.

Having thus established the authorship to her satisfaction, Miss Dana sought to obtain information from some of the Barker family. She stated her case in the English Notes and Queries, but received no reply. She then sent inquiries to several officers bearing the name, and had two or three answers, one being from Colonel G. Digby Barker; but unfortunately he had nothing in his possession known to be in his grandfather's handwriting, though there were some of his sketches of the defences at Philadelphia. The Burbecks had never heard their father mention either Barker or Willmott, and had no idea how the manuscript came into his hands; and Colonel Gardiner found nothing among his papers to shed any light upon it. A few facts, however, point to a theory which seems conclusive. Burbeck's father¹ was an engineer in the

¹ William Burbeck, son of Edward and Martha Burbeck, was born in Boston 22 July, 1716 (Boston Town Records); baptized at King's Chapel 4 October, 1721; married Jernusha Glover, of Boston, 7 October, 1749 (King's Chapel Registers); and had seven children baptized at Christ Church, among them Henry Burbeck, 9 June, 1754 (Christ Church Registers). See Foote's Annals of King's Chapel, ii. 167, 168, 600; and New England Historical and Genealogical Register for 1849, iii. 101, and for 1858, xii. 351.



British service before the breaking out of the War, and stationed at Castle William, having frequent intercourse with the officers in Boston. The son was born here in 1754, and was naturally acquainted with many of them at the beginning of the Siege. It was not long before both escaped, — the father becoming Lieutenant Colonel, and the son Lieutenant in the Gridley-Knox regiment of artillery. At the evacuation of Philadelphia the Fourth and the Tenth regiments were both there, and the Tenth, in which Barker was Captain, was the last to depart the City, having to cover the retreat. The movement was a hurried one, and as the orderly-book at General Headquarters was left behind we can easily believe that this Diary shared its fate. Lieutenant Willmott of Captain Dorsey's Company of the Maryland artillery — the first to enter the city — probably found it. Willmott and Burbeck must have met not long after, and, as the Siege of Boston was a much more interesting event to the latter, Willmott doubtless let him have the Diary. There are scrawls¹ on the back of it showing that its possessor had something to do with a company from Baltimore, which was Willmott's home. Incidentally I may add that this Willmott's brother William is said to have been the last man wounded in the Revolutionary War.

Under date of 18 January, 1775, the Diarist mentions a meeting of The Loyal and Friendly Society of the Blue and Orange, to which he belonged. Miss Dana pursued this clue also as far as she could. The British Museum had the constitution, rules, and list of original members of the Society, — which was founded by officers of the King's Own in commemoration of the Revolution of 1688 and the accession of the House of Hanover in 1714, — but the list does not include the members of 1775.

This unique story would not be complete without a final word concerning the elusive writer, whom we have at last hunted down and invested with a distinction in literature which he never anticipated. Lieutenant Barker was the son of Admiral John Barker,²

¹ The name of Clement Skerrett was also scrawled on the Diary. He was an American officer of the same regiment as Willmott and also from Maryland. He afterward belonged to the Maryland Society of the Cincinnati.

² General Barker has the Admiral's portrait, painted by an American artist whose name he does not remember.

who was third in command at the taking of Havana in 1762. The son married Caroline, daughter of Lady Henrietta Conyers, whose sister, Lady Juliana Fermor, married Thomas Penn of Stoke Park, Bucks, son of William Penn, one of the hereditary proprietors of Pennsylvania. These ladies were daughters of the first Earl of Pomfret. Lieutenant Barker, as we have seen, afterward became Captain in the Tenth and finally retired as Lieutenant Colonel of the Twenty-seventh, and lived at Clare Priory, near Clare Castle in Suffolk. This estate is now held by General Barker, who told me that when he leaves Bermuda he hopes to enjoy some degree of leisure in his ancestral home.

MR. ANDREW MCFARLAND DAVIS reported the incorporation of these Historical Societies in Massachusetts: —

Lynn Historical Society.

An organization with this title was incorporated 27 April, 1897, for the purpose of investigating, recording, and perpetuating the history of the town of Lynn, and collecting, holding, and preserving documents, books, memoirs, relics, and all other matters illustrating its history, or that of individuals identified with it.

Holbrook Historical Society.

A Society known by this name was incorporated 29 September, 1897, for the purpose of collecting and preserving such publications, manuscripts, pictures, memorials, and specimens as may illustrate local and general history, and providing a safe repository for the same.¹

¹ A genealogical Society called the SOCIETY OF DESCENDANTS OF WALTER ALLEN was incorporated 16 July, 1897. Among the declared purposes of the Society were those of "furthering historical and genealogical research."

THE RAYNHAM PUBLIC LIBRARY was incorporated 22 October, 1897. To the general functions of a Library were added, in the list of purposes of the corporation, "promoting antiquarian, historical and literary purposes among the inhabitants of said Raynham."

Among the religious Societies incorporated in 1897, is THE SPIRITUALISTS' PROGRESSIVE UNION CHURCH, which received its Certificate of incorporation 22 October, 1897.

On behalf of Mr. ABNER C. GOODELL, JR., who was unavoidably absent, Mr. Davis also presented the following communication:—

At a Meeting of this Society four years ago,¹ I ventured to express the opinion that a Resolution of the Bristol County Convention of September, 1774, in which the members pledged their "utmost endeavour to disownenance and suppress all mobs, riots, and breaches of the peace," was in keeping with the sentiment generally entertained by the wisest patriots and best men of the day; and I further ventured to declare that it was doing a great injustice to the sober, sensible men who thought out and wrought out the problem of Independence to impute to them responsibility for, or sympathy with, such lawless proceedings as the affray in King Street in March, 1770, and the destruction of the Tea in December, 1773.

Since my assertions before this Society and elsewhere upon this subject have been more than once publicly questioned, I have thought it possible that I might sometime bring together the testimonies of contemporary patriots in support of my statements, and I may, in the near future, ask that such a symposium be admitted to a place in our Publications. But a circumstance which occurred during our summer vacation induces me to anticipate this purpose, in part, and to give now one instance in point of such a character as to require that its publication be not delayed. Through the kindness of Mr. Wilberforce Eames of the Lenox Library, I have been put in possession of an exact copy of a letter by Franklin on the doings of the Tea Party, which, since it is not included in his Works, as edited by Sparks, nor elsewhere given in print² to my knowledge, I deem worthy to be contributed to our printed Transactions, and I ask that it be submitted to the Council for that purpose. The letter, which was addressed to

ration 11 May, 1807. The purposes of this Corporation not only comprehend those ordinarily to be found in similar organizations, but add thereto "encouraging religious, art, literary, musical, historical, and scientific education."

¹ In December, 1803. Publications, i. 166, 167.

² After Mr. Eames had given to Mr. Goodell the copy of Franklin's letter which he communicated at this Meeting the document was printed in the Bulletin of the New York Public Library, i. 244.

Thomas Cushing and three other leading patriots of Massachusetts, and, for a time, was evidently in the possession of Samuel Adams, is as follows:—

London, Feb. 2, 1774.

Gentlemen,

I received the Honour of your Letter dated Dec^r 21. containing a distinct Account of the Proceedings at Boston relative to the Tea imported there, and of the Circumstances that occasioned its Destruction. I communicated the same to Lord Dartmouth, with some other Advices of the same Import. It is yet unknown what Measures will be taken here on the Occasion; but the Clamour against the Proceeding is high and general. I am truly concern'd, as I believe all considerate Men are with you, that there should seem to any a Necessity for carrying Matters to such Extremity, as, in a Dispute about Publick Rights, to destroy private Property; This (notwithstanding the Blame justly due to those who obstructed the Return of the Tea) it is impossible to justify with People so prejudiced in favour of the Power of Parliament to tax America, as most are in this Country.—As the India Company however are not our Adversaries, and the offensive Measure of sending their Teas did not take its Rise with them, but was an Expedient of the Ministry to serve them and yet avoid a Repeal of the old Act, I cannot but wish & hope that before any compulsive Measures are thought of here, our General Court will have shewn a Disposition to repair the Damage and make Compensation to the Company. This all our Friends here wish with me; and that if War is finally to be made upon us, which some threaten, an Act of violent Injustice on our part, unrectified, may not give a colourable Pretence for it. A speedy Reparation will immediately set us right in the Opinion of all Europe. And tho' the Mischief was the Act of Persons unknown, yet as probably they cannot be found or brought to answer for it, there seems to be some reasonable Claim on the Society at large in which it happened. Making voluntarily such reparation can be no Dishonour to us or Prejudice to our Claim of Rights, since Parliament here has frequently considered in the same Light similar Cases; and only a few Years since, when a valuable Saw-mill, which had been erected at a great Expence was violently destroyed by a Number of Persons supposed to be Sawyers, but unknown, a Grant was made out of the Publick Treasury of Two Thousand Pounds to the Owner as a Compensation.—I hope in thus freely (and perhaps too forwardly) expressing my Sentiments & Wishes, I shall not give Offence to any. I am sure I mean well; being



ever with sincere Affection to my native Country, and great Respect to the Assembly and yourselves,

Gentlemen,
Your most obedient
and most humble Servant
B FRANKLIN

Hon^{ble} THOMAS CUSHING
SAM^l ADAMS
JOHN HANCOCK } Requires
WILLIAM PHILLIPS

[Endorsed, in the handwriting of Samuel Adams.]
Letter from D^r Franklin to a Com^r Land. Feb. 2-74.

Mr. JOHN NOBLE exhibited some original papers, including a Bill for meals and lodging furnished the Jury which tried the British Soldiers who quelled the Riot in King Street, Boston, on the night of the Fifth of March, 1770, and spoke as follows: —

These old papers, relics of Revolutionary days, have a certain interest in themselves and in their connection with the events of that period, and also in the information they incidentally give us of the life and conditions and circumstances of the time.

The first is the original Bill for meals and lodging furnished by the keeper of the Jail to the Jury which sat in the trial of the British soldiers concerned in the Riot called "the Boston Massacre." It is made out on a sheet of paper darkened and discolored by time and rude handling, with the lower half torn off and one corner of it missing, but with enough left even of that to be easily intelligible. It covers two pages, and the remaining two are blank. The items show that the Jury fared somewhat differently from those of to-day. This, as will appear later on, was the first occasion on which such a bill was incurred or became necessary. It appears to have been examined with careful scrutiny down to its minutest details, and to have gone through every stage with due official formality and precision. The startling figures of the Old Tenor subside into insignificant modesty in the final process of reduction into Lawful Money, and we get a hint of the state of the currency at that time. The Bill is as follows: —

1807.]

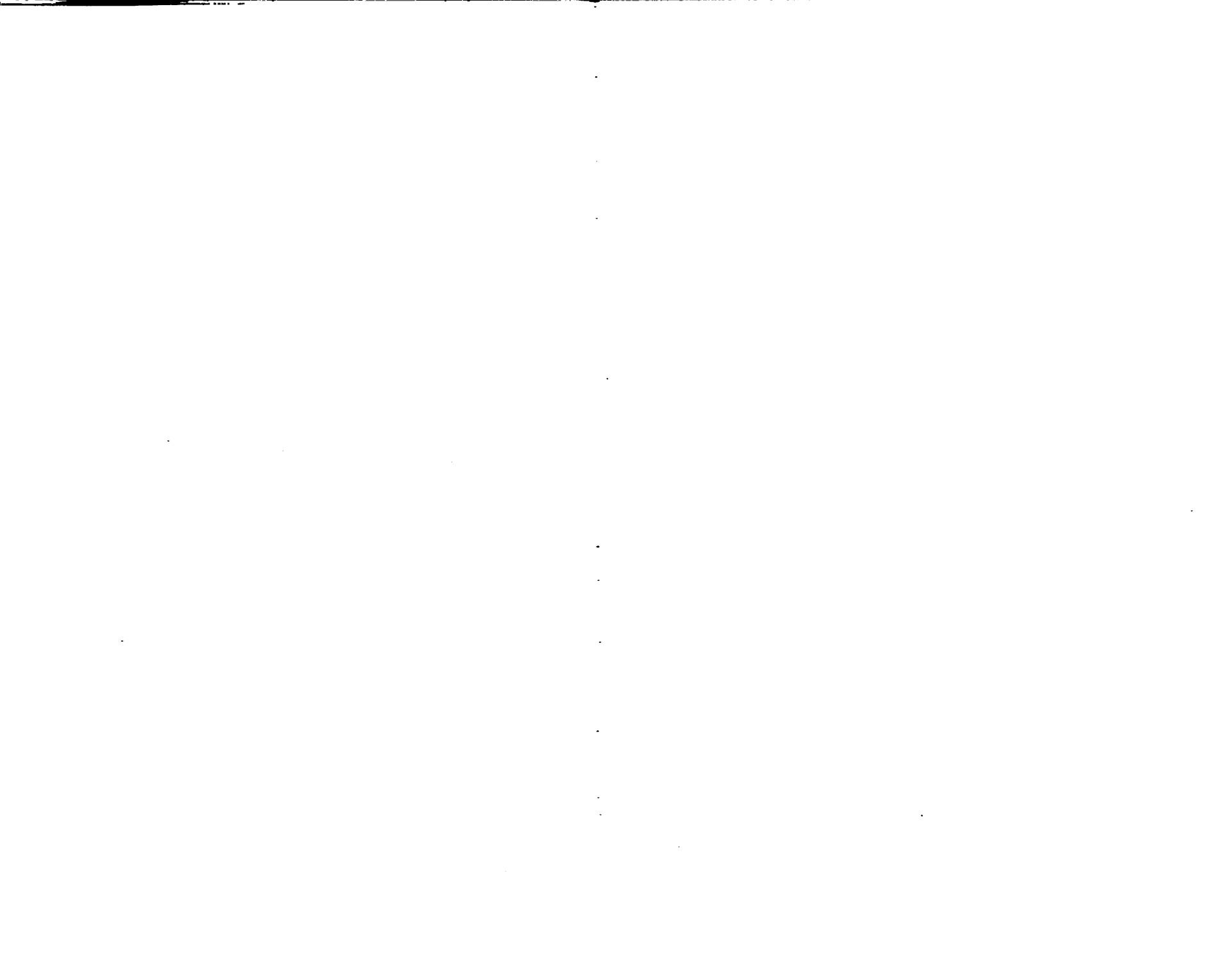
ACCOUNT OF JOSEPH OTIS, 1770.

59

D^r

Mr. Joseph Mayo To Joseph Otis
on Acc^t of the Soldiers Tried of y^e 29th Reg^t
1770

	O Ten ^r —
To Biskett & Cheese & Syder	£1 " 0 "
To Suppers for 14 Men @ 11/8	7 " 17 " 6
To Lodging 12 Men @ 2/	1 " 4 " 0
28 To Breakfast 14 Men @ 6/	4 " 4 " 0
To Bread Cheese & Syder	18 " 4
X To Supper 14 Men @ 11/3	7 " 17 " 6
To Lodging 12 Men @ 2/	1 " 4 " 0
29 To Breakfast 14 Men @ 6/	4 " 4 " 0
To Bread, Cheese & Syder	1 " 6 " -
X To Supper for 14 Men @ 11/3	7 " 17 " 6
To Lodging 12 Men @ 2/	1 " 4 " -
30 To Breakfast 14 Men @ 6/	4 " 4 " -
To Bread Cheese & Syder	1 " 6 " -
To Supper for 14 M[] 1/8	[]
To Lodging 12 Men []	[]
Dec. 1 To Breakfast 14 M[]	[]
To Bread Cheene & []	[]
X To Pipes & Tobacco []	[]
X To Supper 14 M[]	[]
6d To Lodging 12 N[]	[]
2 To Breakfast 14 []	[]
X To Supper 14 V[]	[]
To Lod[]	[]
2 ^d To Brea[]	[]
To Bread []	[]
X To Pip[]	[]
X To Supp[]	[]
To Lodg[]	[]
1770 Brought Forward	295 : 10 : 10
Dec ^r 4 To Breakfast 14 Men @ 6/	4 " 4 —
To Bread Cheese & Syder	1 " 6
X To Supper 14 Men @ 11/3	7 " 17 " 6
To Lodging 12 D ^r @ 2/	1 " 4 —
5 To Breakfast 14 Men @ 6/	4 " 4 —
To Bread Cheese & Syder	1 " 6 —
To Fireing 8 Nights for y ^e officers	115 : 12 : 4
who Attended @ 7/6	8 " 0 —
old Ten ^r £118 " 12 " 4	



THE COLONIAL SOCIETY OF MASSACHUSETTS.

[Doc.

To Sparites Licker	Is Lawful Money £15 "	16 "	4
	0 = 19 =	5	
Joseph Mayo	£ 16 =	15 =	9
] Jr Ac ^t having Considered the Same			
] pounds fifteen Shillings & Six pence old Ten' —			
] over Charged which is Equal to 18 $\frac{1}{4}$ lawfull			
] llowd & paid out of the County Treasury the			
] tees pound Seventeen Shillings & Eight			
] In full to Discharge the above account			
Eliph ^t . Pond			
[Williams —			
[Miller			
Boston in & for said County on the			
[ordered that the same be and hereby			
] nial Order on the County Treasury for			
] eight pence Lawful Money to the			
Ex. Price Cler			

[FILED] Maknes Account 1770.

The Bill bears the approval of Eliphalet Pond, Joseph Williams, and Ebenezer Miller, three of the Justices of the Court of General Sessions of the Peace, and the order of the Court for its payment out of the County Treasury, signed by Ezekiel Price, the Clerk of the Court.¹

¹ ELIPHALET POND, of Dedham, "farmer," was subsequently an Addresser of Hutchinson. He was one of his Majesty's Justices of the Peace, appointed 4 January, 1748-49, and was made a Justice of the Quorum, 4 February, 1762.

COL. JOSEPH WILLIAMS was one of the wealthiest and most eminent citizens of Roxbury in his day, active in town affairs, many years a Selectman, Representative in the General Court, Clerk of the First Parish nearly fifty years, and one of the foremost in the various measures adopted on the eve of the Revolution. He was the Moderator of the Town Meeting, 7 December, 1767, where it was resolved to "take all proper and legall measures to encourage the produce and manufactures of this Province, and to lessen the use of Superfluities imported from abroad," and, with Capt. Mayo and others, upon the Committee to solicit subscriptions. He was one of a Committee appointed 8 March, 1770, to wait on Governor Hutchinson with the petition of Roxbury citizens praying for the removal of all troops out of Boston, and desiring "in a peculiar manner" to express "astonishment, grief and indignation at the horrid and barbarous actions committed there last Monday evening by a party of those troops." On the sixteenth of November, 1772, at a meeting held to consider "the late alarming report that the Judges were to receive their salaries direct from the Crown,"

1897.]

EZEKIEL PRICE.

61

Joseph Otis was the Keeper of the County Gaol in 1770, as appears from entries in the Selectmen's Minutes,¹ and from many

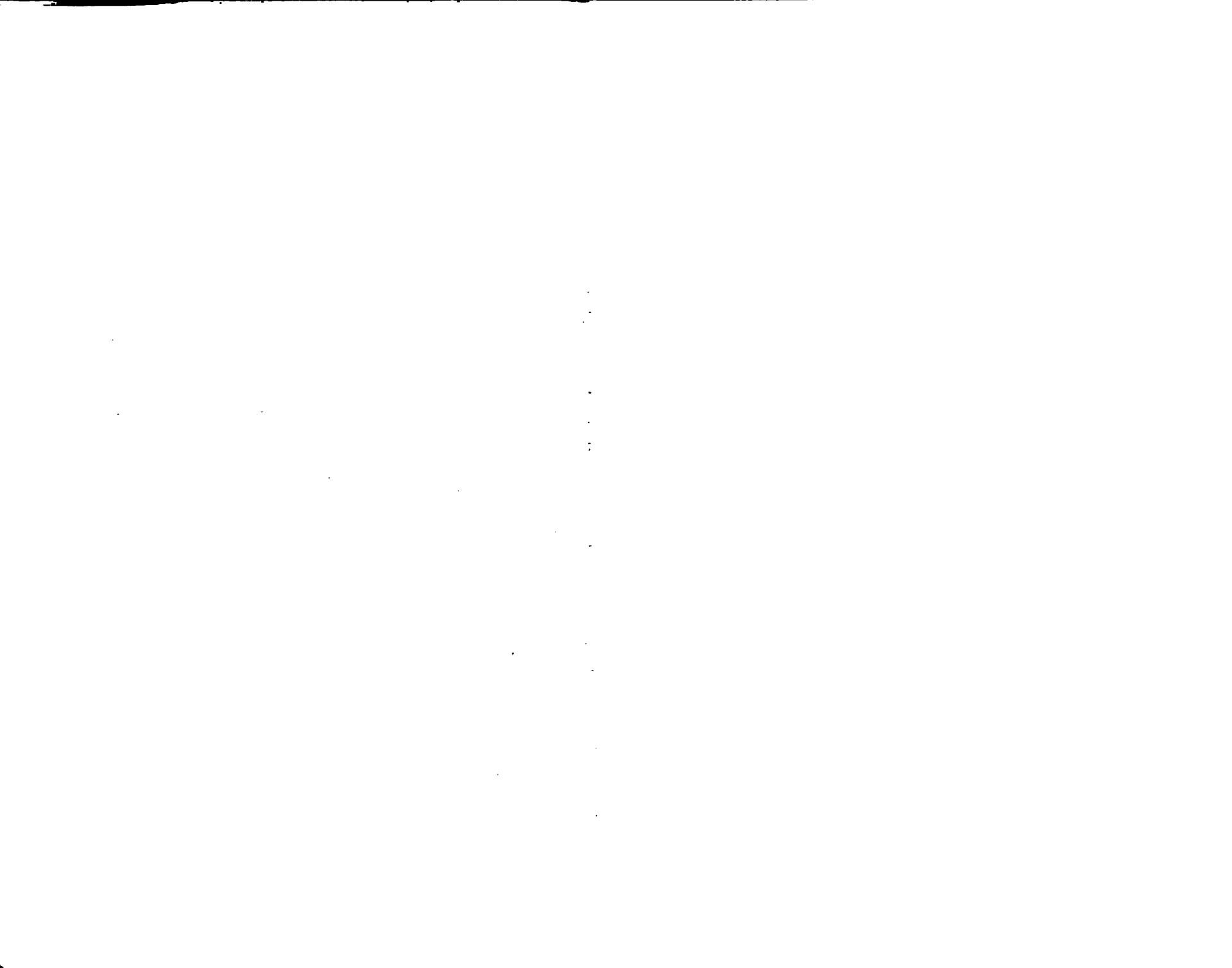
he was made one of a Committee, — again in company with Major Mayo, — to draw up instructions to their Representative, Capt. William Heath, which, on 23 November, reported an Instruction to propose an Act for the Support of the Judges independent of the Crown, and providing for the power of removal by the Legislature; and again, on this later date, he was one of a Committee to consider and report upon a letter from the town of Boston, inviting a communication of sentiments "on our common danger." This Committee, reporting 14 December, "made great uneasiness in the meeting." It was divided in its Report, — the majority seeing nothing new in the premises, in view of the Instruction already given and the "probability" that the various officials "are to receive their support from the revenues of America," and finding no need of further action; and the minority, whose Report was accepted, setting out the grievances, and resolving that they "view these infringements and innovations as insupportable burdens to which they cannot submit." At a Meeting, 8 December, 1773, — which voted to pass over in silence the soldiers "about the streets of this town, with their arms, equipt in a warlike posture," — he was appointed upon a Committee to draw Resolutions on the Tea Act, which declared "that the disposal of our own property is the inherent right of free men; . . . that the claim of Parliament to tax America is, in other words, a claim of right to levy contributions on us at pleasure; [and that] a virtuous and steady opposition to this plan of governing America is absolutely necessary to preserve even the shadow of liberty, and is a duty every free man owes to his country." On the twenty-sixth of December, 1774, at a Town Meeting held to adopt measures to "carry into execution the agreement and association of the late Continental Congress," various votes were passed for raising its quota of Minute-Men, and Col. Williams was chosen one of a Committee of three, with Col. William Heath and Lieut. Robert Pierpont, to "draw up the Articles of Enlistment for the said Company of Minutemen." In a letter of General Heath to Harrison Gray Otis, 21 April, 1798, which is quoted by Drake, this is spoken of as "the first company of minute-men raised in America in 1775."

Williams had been a Colonel in the old French wars, serving in the Campaigns of 1756-1760 in Canada, and at Lake George and in the Mohawk region. He was one of his Majesty's Justices of the Peace, appointed 23 June, 1753, and again 5 November, 1761; and 1 October, 1772, he was made a Justice of the Quorum. He was born in Roxbury, 10 April, 1706, the son of Joseph and Abigail Williams, and died 26 May, 1796, at the age of 90. (Roxbury Town Records; Drake's The Town of Roxbury, and his chapter (xi.) on Roxbury in the Provincial Period in the Memorial History of Boston, vol. ii.)

EBENEZER MILLER had long held a commission as one of his Majesty's Justices of the Peace, his appointment dating from 11 January, 1758.

EZEKIEL PRICE seems to have been a man in general request in all Town affairs, and most active, efficient, and prominent wherever the interests of

¹ Boston Record Commissioners' Reports, xxiii. 78, et al.



orders in the Records of the Court of General Sessions of the Peace¹ for reimbursement from the County Treasury for "Subsistence of Sundry poor Persons, Prisoners in said Gaol, who have not the where withal to support themselves," as well as for many

Boston were concerned. He was for many years Chairman of the Board of Selectmen, and served on innumerable committees of importance, often with Hancock, Adams, Warren, and other leading citizens. (Reports of the Boston Record Commissioners, xvi, xviii, xxv and xxvi *passim*.) He was a member of the Committee of Correspondence and Safety. He seems to have been especially relied on in financial concerns of the town, and this quality is recognized in the Acts of the General Court. (Province Laws, v. 735, 741, 901.) He was a Notary Public, from 19 June, 1753, to 18 January, 1764 (Whitmore's Civil List, p. 163), and had his office on the first floor of the Old State House. Resigning the position of Crier of the Court of Sessions, he was appointed and sworn as Clerk of that Court, 14 April, 1771, "Mr. Middlecott Cooke, one of the Clerks of this Court having lately dyed." (Minute Book of the Court of General Sessions of the Peace, No. 5 (Suffolk), 1769-1773.) He was also one of the two Clerks of the Inferior Court of Common Pleas. In his Diary (p. 203), referred to below, he says: "Tuesday Aug. 22, [1775]. . . . met Mr. Joseph Otis, jun., on the road, who informed me that Benjamin Gridley was appointed one of the judges of the Court of Common Pleas, and that Mr. Goldthwait, as clerk of that court, officiated, and did business in court; that several actions were defauited, two against Mr. Hancock; also that Gridley moved in the sessions that my office he broke open to get the Session's Book, &c, out of it; but some of the other members of the court opposed it, so that it could not be carried; but that Mr. Goldthwait was very angry at my leaving the town, and not delivering the Court Book." At the April Term, 1776, for Suffolk, held at Braintree, "Messrs. Ezekiel Price and Daniel Bell are appointed Joint Clerks of this Court, and were each sworn to the faithfull Discharge of their Duty in said Office." (Records of the Inferior Court of Common Pleas, xxxix. 1.) At the October Term, Bell asked "to be discharged" from further duty, and "Ezekiel Price is to continue sole Clerk until this Court shall otherwise Order" (*Ibid.*, p. 29); and thereafter the Records are attested by him. As Clerk of these Courts he served some twenty years. Before the Revolution he was the Confidential Secretary of several Provincial Governors. He was chosen into the Massachusetts Historical Society, 30 April, 1783, and died 15 July, 1802, at the age of 74. (1 Massachusetts Historical Collections, viii. 83.) He left Boston with his family in May, 1775, and went to Stoughton, where he was all the time alert as to events in Boston. He afterward took a house in Dorchester, where he remained till it was safe to return, keeping up daily visits to town. A Diary kept by him from 23 May, 1775, to 18 August, 1776, contains much interesting matter relating to affairs at that time. It is printed in 1 Proceedings of the Massachusetts Historical Society for November, 1883, vii. 188-202. Many of his papers are in the Boston Atheneum. See Appendix to the Librarian's Annual Report for 1896, pp. 6, 7.

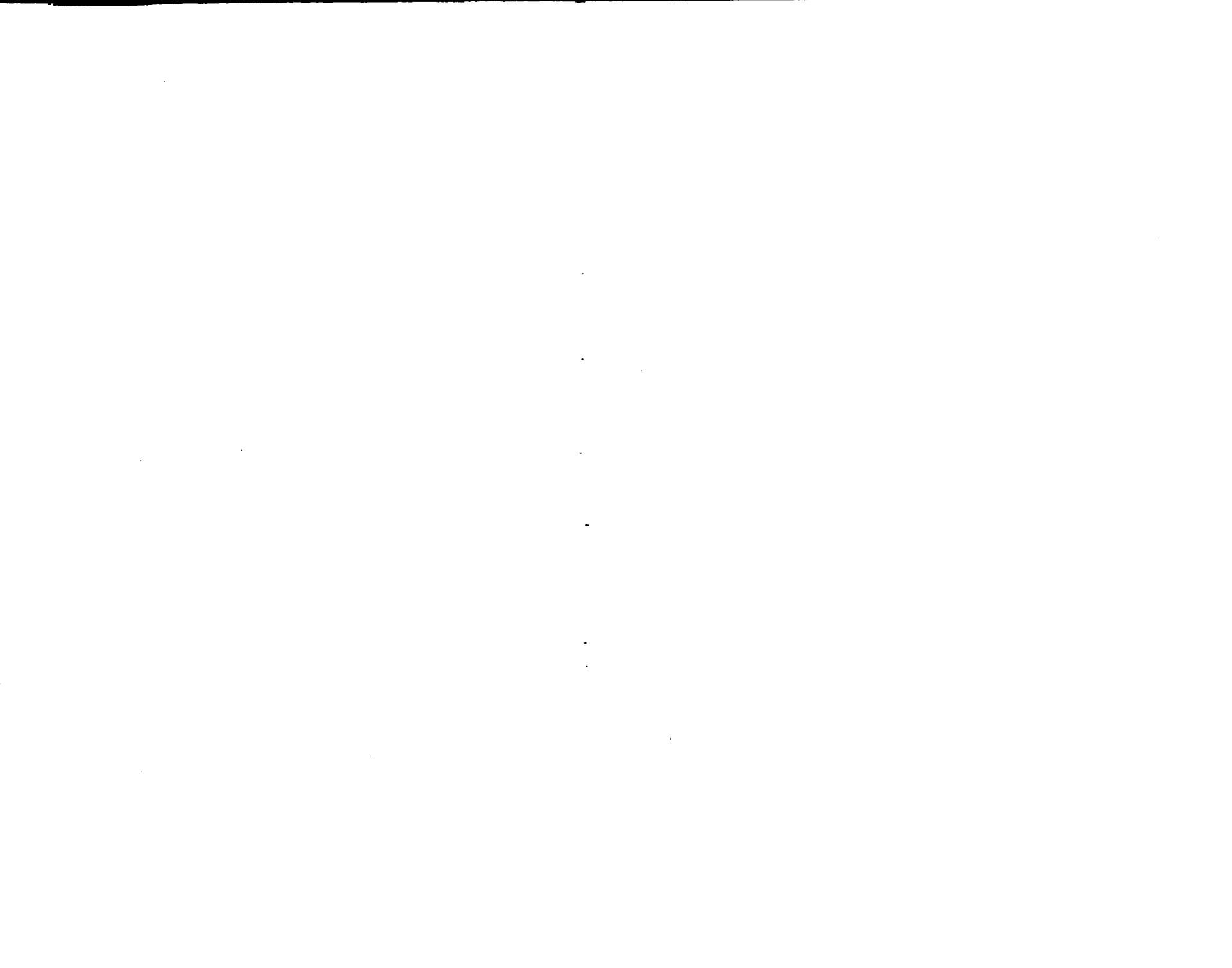
¹ Minute Book, No. 5 (Suffolk), 1769-1773, *passim*.

other outlays in his official capacity. He was also Keeper of the Court House, having allowances "for his time in Tolling the Bell, Sweeping the Court Chamber, making Fires for the Courts & taking care of the Court House," in "bottoming Chairs for Jurymen," and for "Cash paid for Candles for the Court." He also gets an extra allowance in February, 1771, of "Four Pounds for his extraordinary care & trouble in attending the several Courts of Justice, for the Year past, they having sat a much longer time than usual."¹ From these and other entries he would seem to have had a varied field of duty, and to have been an essential, though subordinate, instrument in the due administration of justice. From these entries there also comes a glimpse of the primitive conditions of that day.

Capt. Joseph Mayo was a prominent citizen of Roxbury, where he was born 28 February, 1720-21, — a son of Thomas and Elizabeth (Davis) Mayo, and grandson of the emigrant ancestor, John Mayo, who was brought over, a young child, in 1633 by his step-father. Impressed into service as one of the twenty men from Roxbury, in the expedition against Louisburg, in 1745, he thus got his first military experience. In the stormy times before the breaking out of the Revolution, he served on many Committees of the Town, often with William Heath, later a Major-General in the War. He was on the Committee of 7 December, 1767, to procure signers to the Non-Importation Resolution; on that of 26 May, 1769, to draft Instructions to the Town Representative, Col. Joseph Williams, to "proceed in a cool, calm and steady manner . . . to cultivate and maintain a good harmony and union between Great Britain and her Colonies," but still to maintain their "invaluable Charter rights," and to inquire as to the quartering of troops in Boston, — instructions somewhat remarkable for their calmness and conservatism; on a like Committee 16 November, 1772; and again, 8 December, 1773, to draft Resolutions on the Tea Act, wherein it was resolved —

"to Stand fast in that Liberty wherewith the Supream Being hath made them Free . . . to join with the Town of Boston and other Sister Towns in such Constitutional Measures as shall be Judged proper to preserve and hand down to Posterity Inviolate those Inestimable Rights

¹ Minute Book, No. 5 (Suffolk), 1769-1773, *passim*.



and Liberties handed down to us under Providence by our worthy Ancestors."¹

The Record of the Trial of the Soldiers who were concerned in the affair of the Fifth of March shows Mayo to have been the Foreman of the Jury.² Drake quotes from a letter written by Governor Hutchinson to Sir Francis Bernard, after the latter's return to England:—

"Capt Joseph Mayo, one of your Roxbury Neighbors, was foreman of the jury at the trial of the Soldiers. I am much inclined to make him a Major."

Mayo, accordingly, was appointed Major of the First Suffolk Regiment, in 1771. He died 14 February, 1776.⁴ In the various prominent positions in which he was placed, he seems to have shown himself a calm, cool, conservative, and patriotic citizen throughout, though he died too early for anything more than a share in the preliminary movements of the great struggle.

The next Term of the Superior Court after the Riot came in on the thirteenth of March. It is stated that the Judges, sensible of the injustice of an immediate trial at a moment of such excitement, at first determined to continue it over to the next Term, but, overawed by the attendance of a large Committee with Samuel Adams and Joseph Warren at its head,⁵ rescinded their decision, and at once

¹ Drake's *The Town of Roxbury*, pp. 20-28; *Memorial History of Boston*, II. 236.

² Records of the Superior Court of Judicature, 1770, xxix. 55.

³ Drake's *The Town of Roxbury*, p. 441.

⁴ The authority for this date is a manuscript in the Library of the New England Historic Genealogical Society, entitled "Town and Parish Records copied appertaining to the Families of Child with others connected by marriage, 1847," p. 42, where it is also stated that Mayo's wife was Esther Kenrick, born 26 August, 1726, to whom he was married 14 November, 1745, and that she died 26 August, 1775. The compiler states that these facts were copied "from a memorandum borrowed of Mrs. Elizabeth Child."

Administration on Joseph Mayo's estate was granted, 4 March, 1776, to Joseph Mayo of Warwick, in the county of Hampshire (Suffolk Probate Files, No. 13,837).

⁵ Cf. The Diaries of Benjamin Lynde and of Benjamin Lynde, Jr., under date of 14 March, 1770, p. 194; and Hutchinson's *History of the Province of Massachusetts Bay*, III. 286, 288.

The Boston Town Records bring out many points as to the Riot itself, the

named a day to which they adjourned the Court. This is stated on the authority of Hutchinson.¹ As a matter of fact, however, the Trials did not come on till the August Term, and even then at an adjournment of it. There is no entry of the proceeding in the Records of the March Term, nor upon the Minute Book or Docket. The Records of the Trials, at the next term, refer to the several defendants "being indicted at the last term, with sundry other persons, in five several Indictments, etc., in which the Soldiers are described as "labourers," and "resident of Boston."

In the Boston Public Library, in the Chamberlain Collection,² so called, is the original Petition of the Soldiers addressed to the Superior Court of Judicature praying to be tried with their leader, Captain Preston,—a request which was denied by the Court, their

temper of the people, and the Trials. See *Boston Record Commissioners' Reports*, xviii, *passim*.

¹ *History of the Province of Massachusetts Bay*, III. 285, 286, and his Letter in the Remembrancer for 1775, p. 181. See also *Life and Works of John Adams*, I. 103; and the Diaries of Benjamin Lynde and of Benjamin Lynde, Jr., p. 194.

Hutchinson is in error in his statement as to the adjournment of the Court as the following extracts from the Minute Book (No. 91) clearly show:—

The March Term in Suffolk began 13 March, 1770, as already stated.

^{a.m.} April 20th. The Court is adjourn'd to Tuesday the 29th of May next, at 10 o'clock

^{a.m.} Tuesday May 29th. The Court is further adjourn'd by Writ under the hands & Seals of two of the Justices of the Court to Thursday next May 31st at 10 o'clock A.M.

^{a.m.} Thursday May 31st. The Court meets according to the adjournment.

Boston May 31st 1770.

Judgment is enter'd up according to the Verdicts, and the Court is adjourn'd without Day.

"Att. SAM WINTHORP, Cler."

^b There is also in the Chamberlain Collection a Plan of the Scene of the Riot, said to have been made by Paul Revere, probably by order of the Court, and to have been used at the Trial. It is on a sheet of linen paper 13 X 8 inches. A copy of it is in Judge Chamberlain's chapter (I.) on The Revolution Impending,—in the *Narrative and Critical History of America*, vi. 48.

The Brief of John Adams is also preserved in the Public Library. It is described in the *Memorial History of Boston* (III. 88), and is printed in Kidder's *History of the Boston Massacre* (p. 10).

A bibliography of the various Reports of the Trial of the Soldiers may be found in the *Memorial History of Boston*, III. 38-40, notes; and in the *Narrative and Critical History of America*, vi. 85-86 and notes.

Trial taking place a month later.¹ The following is the text of the Petition, which is here printed for the first time:—

To the Honourable Judges of the Superior Court.

May it please Y^r Honours we poor Distressed Prisoners Beg that ye Would be so good as to lett us have our Trial at the same time with our Captain, for we did our Captains Orders & if we don't Obay is Command [we] should have been Confine'd & shott for not doing of it— We Humbly pray Y^r Honours that you would take it into y^r serious consideration & grant us that favour for we only desire to Open the truth before our Captains face for it is very hard he being a Gentleman should have more chance for to save his life then we poor men that is Oblidged to Obay his command— we hope that Y^r Honours will grant this our petition, & we shall all be in dut[y] Bound ever to pray for Your honours.

Dated Boston Goal
October ye 21st 1770

Hugh White
James Hartigan
Math^m X Killroy
~~not~~

The Trial of the Soldiers occupied nine days, and that of Captain Preston,² the month before, six days. These Trials seem to

¹ Captain Preston's Trial began on Wednesday, the twenty-fourth of October, at eight o'clock in the morning, and ended on the thirtieth; the Soldiers' Trial began on Tuesday, the twenty-seventh of November, and continued till the fifth of December. (The Diaries of Benjamin Lynde and of Benjamin Lynde, Jr., pp. 184-200.) See Postscript, post, p. 82.

There is a very misleading error in Kidder's History of the Boston Massacre wherein it is stated (pp. 135, 136) that the Trial of the Soldiers began on *Saturday*, 27 November, 1770, which date actually fell on *Tuesday*. After mentioning that it was impossible to go through the Trial in one day and that, by consent of counsel, the Court adjourned "over night," Kidder states that on "Wednesday, nine o'clock, the Court met according to adjournment." This error occurred in the original edition of the "Trial" printed by John Fleming in Boston, 1770, and Kidder blindly perpetuated it. I am indebted to Miss Elizabeth H. Connolly for calling my attention to this blunder.

² The Indictment was drawn by the Attorney General, Jonathan Sewall, but he did not appear, — "disappeared," as John Adams said. See an interesting letter concerning the Trial in the *Life and Works* of John Adams, x. 211.

There is a narrow strip of paper slipped into Minute Book No. 91 of the Superior Court of Judicature, covering the August Term (Suffolk), 1770,

have been the first in the history of the Province which lasted more than a single day. As a consequence of their mere length they raised several perplexing questions, for the solution of which precedents had to be sought, analogies traced, and judicial interpretation and decision brought to bear. At the outset one question had to be decided at once in order to prevent any flaw in the proceedings, — that as to keeping the Jury together till they should be discharged of their verdict, — an every-day proceeding at the present time.¹ The novel situation here, accordingly, required a special order of the Court, which appears in the margin of the Record of Captain Preston's² trial:—

evidently made by the Clerk at the trial of Capt. Preston, and placed where it has remained securely tucked away for more than a century. It reads as follows:—

Capt Preston in his Trial challenged peremptorily nineteen Jurors viz. 18 of the Country's Jury, & four tallis men; he also challenged two other of the Country's Jurors, but by agreement of the Council for the Crown they were not considered as peremptory Challengers, by reason that s^t Preston had not the names of the s^t two Jurors before he was brot to Trial
N. B.

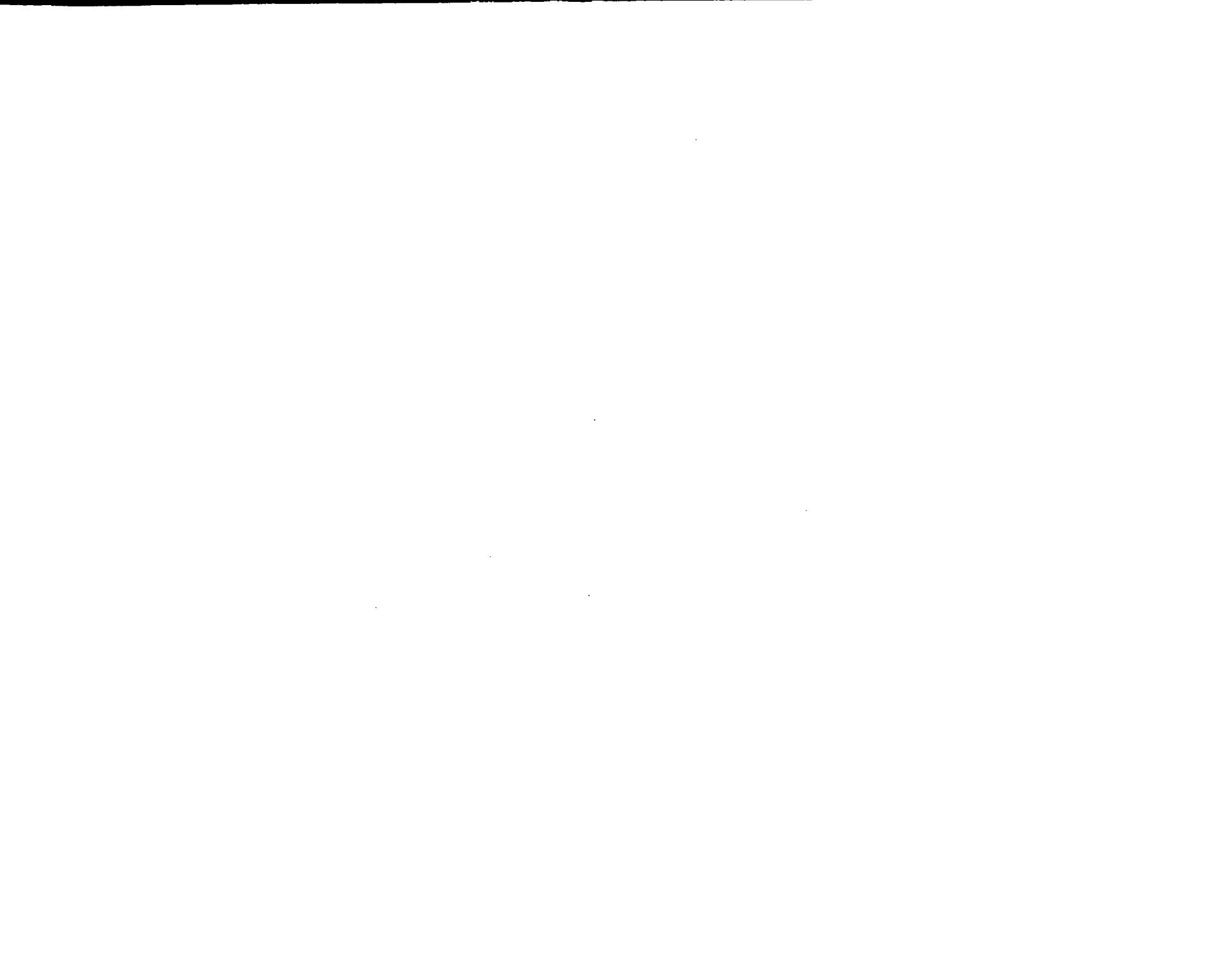
several Talis men were returned by the Sheriff who were excused by the Court for reasons by them offer'd viz Henry Brownfield Esq^r, he having a Commission for the peace; and William Boardman he having been on the Jury of Inquest & Procter he declaring himself under Blasie

¹ See Quincy's Massachusetts Reports, p. 383. A note by Samuel Miller Quincy, the learned Editor, speaks of a list of "Trials by Jury cont'd for several Days," found among the papers of Judge Trowbridge, which it is suggested —

"may have been drawn up for this case, and which comprises the trials of John Ll. Burne, 2 Hargr. St. Tr. 19 & 7 Id. 534; Peter Cook, 4 Id. 738; Capt. Kidd, 5 Id. 287, and quotes from the trial of Elizabeth Canning, as follows: 'Emlyn in his Opinion says y^r Law will not allow a Jury to go at Large in a Criminal Case while y^r Tyral is depending. . . . Perhaps . . . may be Cause for arresting Judgn't. 10 Vol. State Trial, 407.'"

The note also contains an interesting letter from Judge Oliver to Governor Hutchinson during the trial taken from Massachusetts Archives, xxv. 414.

² Judge Andrew Oliver, Jr. (H. C. 1740), one of the Founders of the American Academy of Arts and Sciences, married Mary Lynde, a daughter of the Second Chief Justice Benjamin Lynde, who presided at the Trials of Preston and the Soldiers. In a letter to Judge Lynde, written the day after the Riot, Oliver describes it and the excited state of the people. Referring to Preston he says that he "bears the most amiable character of any one in the Army, and it is said he endeavored to prevent the exasperated Soldiers from



"N. B. The Court being unable to go through this Trial in one Day, the King's Attorney and the Prisoner consent that the Court shall adjourn over Night during the Trial; the Jury being kept together by two Keepers, one chosen by the King's Attorney, the other by the Prisoner or his Council; besides the Officer appointed by the Court."¹

In the margin of the Record of the Trial of the Soldiers is a similar memorandum of the order of the Court in that case, differing only in this, that the Jury were to be "kept together by proper Officers appointed & sworn by the Court."² The Bill shows that there were two officers, and that they fared like the Jury, unless one item in the charges was for their special benefit; and there is some indication of an effort by the Jailer to lessen the inevitable discomforts of the situation.

Another question arose later, which affected only the County Treasury, but which gave rise to even more anxious deliberation and deeper legal investigation; indeed, it seems to have been regarded as "of very extensive Concernment." The Report of the Decision of the Court of Sessions upon it is given in full by Quincy.³ This, together with the remarks thereon, — delicately but somewhat sharply suggestive in some respects, — were published by Josiah Quincy, Jr., as appears by the Editor's Note, in the Boston Gazette, 20 May, 1771. Only a brief reference, therefore, is necessary.

In view of the length of these trials, unprecedented at that early day, the Justices of the Superior Court of Judicature, at the same August Term,—

"Ordered, that it be recommended to the Court of general Sessions of the Peace to make the Jurors that were impanelled and sworn for the Trial of Thomas Preston, Esq., and the Soldiers, as also the officers who kept them, a reasonable allowance for said Service, said Preston

¹ "Risking, even at the Risque of his own Life." (The Diaries of Benjamin Lynde and of Benjamin Lynde, Jr., pp. 236-228.)

The Massachusetts Gazette for Monday, 10 December, 1770, contains the information that "His Majesty's Ship Glasgow sailed Wednesday for England: In her went Passengers . . . Capt. Preston of the 29th Regiment."

² Records of the Superior Court of Judicature, 1770, xxix. 82.

³ Ibid. xxix. 81.

Quincy's Massachusetts Reports, p. 382, et seq.

1897.] TRIALS OF CAPTAIN PRESTON AND HIS SOLDIERS. 69

trial holding six Days, and said Soldiers nine Days, said Jury's being kept together every night by two or more officers.

Boston Decemb'r 14th 1770. The Court is adjourn'd without Day.

Att SAM WINTHORP Cler¹

The Jurors consequently petitioned the Court of Sessions,² but — "the Court having a Doubt of their Power touching the Grant of the Prayer thereof, ordered the Petition to stand over for Argument at the Sessions in April; . . . the Power of the Court . . . was argued by four Gentlemen of the Bar (*pro & con*) by Desire of the Honourable Justices of the Sessions. It seemed agreed by Bench and Bar that the only Power of the Sessions to grant Monies must be derived from *provincial Law*; that such a Power could be derived from no where else. And the Question was, whether the Act of 4 W. & M. c. 12 (3) gave the Court a Power to grant Monies for the Allowance before mentioned. The Debates at the Bar took up the Day. And the Justices after this Solemn Hearing, (only Mr. Justice Dunbar doubting) were unanimously of Opinion that the Prayer of the Petition of the Jurors should not be granted; and the Petition was accordingly dismissed."³

¹ Minute Book No. 91 of the Superior Court of Judicature, — the last entry in the August Term (Suffolk), 1770.

² The Act of 1692 (chap. 9), dividing the powers of the old County Courts under the Colonial Charter, gave civil causes to the Courts of Common Pleas, which were called "the County Courts or inferior Courts of Common Pleas," and the inferior criminal causes to the General Sessions of the Peace, "this act to continue until other provision be made by the general court or assembly."

This was followed by the fuller Act of 1693 (chap. 83) establishing "Judicatories and Courts of Justice within this Province." This provided for Justices' Courts, Courts of Quarter Sessions of the Peace, Inferior Courts of Common Pleas, and "a Superior Court of Judicature over this whole Province." This Act was disallowed by the Privy Council, 22 August, 1695, as not providing for the appeal of real actions to the King in Council; as was likewise the Act, chap. 9.

The Act of 1697 (chap. 9) touching the same Courts was likewise disallowed, 24 November, 1698, as being too broad in one of its provisions for a trial by jury.

The Acts of 1699 (chap. 1, 2, 3), providing for the same Courts, stood. (Province Laws, i. 37, 72, 283, 307, 417, note.)

By various statutes, authority in many civil matters was given to the Court of Sessions, and in its civil capacity it had charge of houses of correction, licensers to innholders, highways, the general financial concerns of the County, and many of the present duties of County Commissioners. "The Justices of the Peace of the same County, or so many of them as are or shall be limited in the commission of the peace" constituted the Court (Province Laws, i. 307).

³ Quincy's Massachusetts Reports, pp. 384, 385. The "four Gentlemen" who argued were the two Quincys, James Otis and John Adams. — Life and Works of John Adams (Diary), ii. 208.

These Trials and their result have become historic. Of the eight soldiers, six were acquitted. Two, Montgomery and Killroy, were found guilty of manslaughter.¹

"Each of them prayeth that the benefit of Clergy be allow'd him . . . Whorespon . . . It is Considered by the Court here that . . . each of them be burned in his left hand, and was delivered according to the form of the Statute."²

The four Judges who sat at the trial were, Benjamin Lynde, John Cushing, Peter Oliver, and Edmund Trowbridge.

Lynde sat as the presiding Justice, Hutchinson having retired from the office of Chief Justice after taking the head of the Government, upon the departure of Governor Bernard for England, in 1769. He was born in Salem, 5 October, 1700, and graduated at Harvard College in 1718. The second of the name to fill the place of Chief Justice,³ Lynde came upon the Bench, 24 January, 1745-46, after some seven years' service as Judge of the Court of Common Pleas in Essex, having been appointed a Special Justice, 28 June, 1734, and Justice, 5 October, 1739. He was also

¹ A part of Judge Lynde's Charge to the Jury at the Trial of the Soldiers is printed in The Diaries of Benjamin Lynde and of Benjamin Lynde, Jr., pp. 228-230. Cf. *Ibid.* p. 200, note 2.

² The Records of the Superior Court of Judicature for 1770 (xxix) give all the Trials in full. A full account of the Trials may be found in the Life and Works of John Adams, ii. 229-236, and references to it in i. 98, 104, 110; and ix. 617. Hutchinson, too, gives an account of the Riot and the Trials in his History of the Province of Massachusetts Bay, iii. 270-280, 285-289, 297-300. See also Gordon's History of the American Revolution (edition of 1788), i. 282-300; Edward G. Porter's chapter (i.) on The Beginning of the Revolution, in the Memorial History of Boston, vol. iii., and Winsor's Bibliographical Note thereto (pp. 38-40), which refers to the Report of the Trials published in Boston, 1770, 12 mo. pp. 217, containing the evidence and arguments; reprinted in London in three editions the same year, and in Boston in 1807, 1824, and again in Kidder's History of the Boston Massacre, Boston, 1870. There is also an account of the Riot in the Narrative and Critical History of America, vi. 49-52, 63-66. Various accounts of it were sent "to our friends in England," — among others, to "Hon". Isaac Barre, Esq. Thomas Pownal, Esq. Dennis Deberdt, Esq. Dr. Benjamin Franklin Esq. William Bullan, Esq. Berwick Trecothick, Esq." (Boston Record Commissioners' Reports, xviii. 10, 16, etc.) See Postscript, post, p. 82.

³ His commission as Chief-Judge was dated 21 March, 1771, and published on the fifth of April following.

in the Council, 1737-1740 and 1748-1766. Of liberal views, and inclined to the side of the people, rather than encounter the storm which was gathering about the payment of judicial salaries by the Crown, he resigned his seat, and was directly appointed Judge of Probate for the County of Essex, 15 January, 1772, holding that office till his death, 8 October, 1781,¹ at the age of 81.

John Cushing, likewise the second of the name in the same position, the son of a Justice and the father of a Chief Justice, had been on the Bench since 16 February, 1747-48, having been previously a Special Justice, 19 August, 1747. He was a Justice of the Common Pleas in Plymouth, appointed 8 July, 1738, and at the same time was Judge of Probate, appointed 12 January, 1738-39. He was a Commissioner of Oyer and Terminer for some trials in Nantucket, 28 June, 1748, and 9 August, 1746. He was also in the Council, 1736-1768. He, like Lynde, resigned from the Superior Court, in 1771, and died in Scituate — where he was born, 17 July, 1695 — on the nineteenth of March, 1778, at the age of 82 years.²

Peter Oliver, belonging, like his associates, to a family of distinction, was, on the resignation of Richard Saltonstall, appointed on the Court, 14 September, 1756. He also had had an experience on the Bench of the Inferior Court of Common Pleas of some nine years, having been appointed in Plymouth County, 12 December, 1747. From 1759 to 1765 he was also in the Council. When Lynde resigned, he was made Chief Justice of the Superior Court.

The provision which made the Justices dependent for their salaries upon the Crown and not upon the local government had increased that of the Chief Justice from £200 to £400. The hostility of the people to what seemed to them an alarming and dangerous measure appears by the Boston Town Records;³ the attitude

¹ This date is taken from his gravestone in Salem. It is elsewhere stated that he died on the ninth of October.

² See a notice of Judge Cushing in the New England Historical and Genealogical Register for January, 1854, viii. 44.

³ This matter of the payment of salaries was taken up at a Town Meeting in Boston, 28 October, 1772, upon "The several Petitions relative to a Report that Stipends are affixed by order of the Crown," etc., and a Committee — Mr. Samuel Adams, Dr. Joseph Warren and Dr. Benjamin Church — was appointed "to draw up an Address to the Governor." The Draught submitted in the afternoon sets out "that a Report has prevailed, which they have reason to

of the Judges was jealously watched. Oliver was ready to brave the storm; impeachment was threatened;¹ juries were defiant. By a

apprehend is well grounded, that Stipends are affixed to the Offices of the Judges of the Superior Court of Judicature of this Province, whereby they are become Independents of the Grants of the General Assembly for their support, contrary to ancient and invariable usage," and refers to the "alarm among all considerate Persons . . . in Town and Country [it] being view'd as tending rapidly to compleat the System of their Slavery;" that "this Establishment appears big with fatal evils," and requests information from his Excellency as to the fact. The Draught was approved. On the thirtieth the Committee reported his Excellency's Reply "delivered to them in Writing," wherein he declines to answer their question. A Committee — "The Hon^{ble} James Otis Esq., Mr. Samuel Adams and The Hon^{ble} Thomas Cushing Esq." — was then appointed to "prepare a Petition to his Excellency," relative to the meeting of the General Court. The draught of this Petition, at once reported, again reverts to this matter, setting forth that "Such an Establishment is contrary not only to the plain and obvious sense of the Charter of this Province, but also some of the fundamental Principles of the Common Law," and entering at length into the subject. The Reply of the Governor, presented 2 November, refers only to the meeting of the General Assembly. The action on this Reply is vigorous and spirited.

On the twenty-third of March, 1773, the matter again came up, and the Report of Samuel Adams is an elaborate discussion of the whole subject, and of the right of petition, generally. The "Report was accepted by the Town aenine contradicte, and Ordered to be Recorded on the Towns Book, as the sense of the Inhabitants of this Town;" and also to "be printed in the several News Papers," and transmitted "to such Towns and Districts as they have or may Correspond with."

The matter again appears in a Town Meeting, 26 July, 1774, when a Committee — Josiah Quincy, Esq., Mr. Samuel Adams (afterward excused), Joseph Greenleaf, Esq., and William Phillips, Esq. — appointed "forthwith to draw up & report . . . a Letter to be sent to the other Towns, relative to the Two Bills for Altering the Constitution of this Province, . . . Reported a Draught, which was accepted Paragraph by Paragraph," one of which read: "When we consider the Conduct of our late worthy House of Representatives, relative to our Superior Court Judges, & their Impeachment of the Hon^{ble} Peter Oliver Esq. for his accepting a Salary from the Crown, in his Office of Chief Justice, & when we consider the uniform Spirit and Conduct of the several Grand Juries thro' the Province, Touching the same Grievances since that Impeachment; we cannot but suppose the aforementioned Acts will bring on a most important & decisive Trial." (Boston Record Commissioners' Reports, xviii. 88-89, 120-125, 184, 187.)

¹ As to Oliver's impeachment, etc., see Narrative and Critical History of America, vi. 26, and the authorities there cited; Life and Works of John Adams, i. 120; ii. 513; and Hutchinson's History of the Province of Massachusetts

Resolve of 14 February, 1774, the Superior Court to be holden "on the morrow" was adjourned to the twenty-second, or to the seventeenth, according to one record and as given by Hutchinson, as grave charges in a remonstrance and petition from the House were pending before the Governor and Council, against Oliver, and it was uncertain what opinion and resolution the Chief Justice might have formed or would form as to the propriety of his sitting and acting in the Court.¹ The Governor, however, withheld his consent to the Resolve, and the Court came in on its regular day, 15 February,² with only Trowbridge, Foster Hutchinson, and William Cushing on the Bench; and thereafter for the next two successive terms (Middlesex and Worcester) only the same three appear. William Browne was added at the next term (Essex), and the four names appear for the next two terms (York and Cumberland and Lincoln). Finally, at the next (Suffolk) term, 30 August, 1774, Chief Justice Oliver again appears at the head of the sitting Bench.³ He also appears, for the last time, at the February term (Suffolk), which was the only term held in any county in 1775. The Record of the term consists of two pages, and stops abruptly without adjournment or further entry, containing only the caption and the record of a single case.⁴

Removed by the Revolution, Oliver left the Province, in 1776, at the Evacuation of Boston, — where he was born 26 March,

Bay, iii. 443-445. Hutchinson refers at length to the attitude of the Judges — and especially of Trowbridge — on the question of Salary. *Ibid.* iii. 442.

¹ Court Records at the State House, xxx. 160; Catalogues of Records and Files in the Office of the Clerk of the Supreme Judicial Court, p. 93.

² As some confusion exists in the several records at the State House concerning the dates of this Term of the Court and the adjournments thereof, the following extracts from the archives of the Superior Court of Judicature are here printed: —

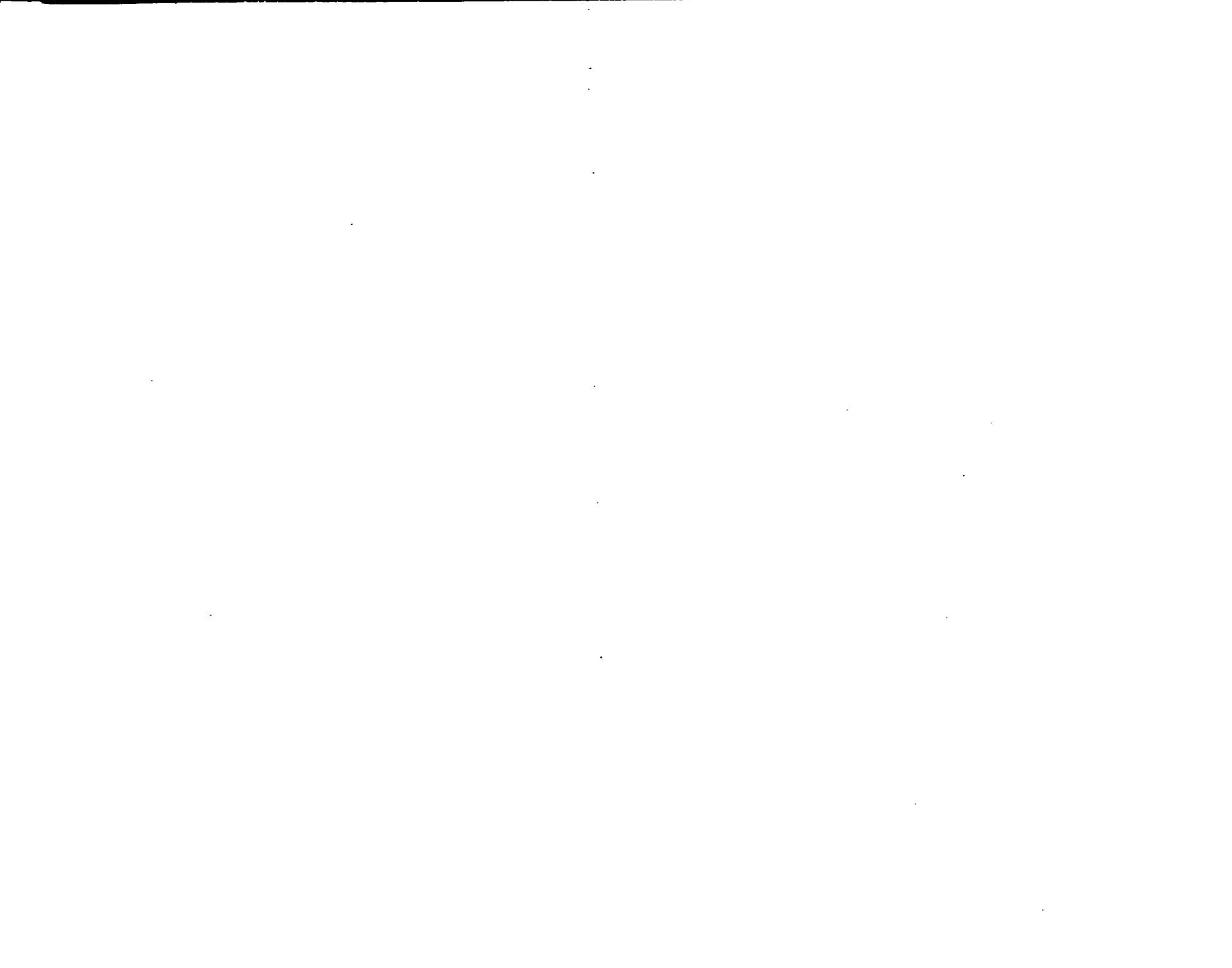
"Tuesday Feb^r 15th the Court met and adjourn'd to Tuesday February 22.⁻⁴" (Marginal entry in Minute Book No. 96 (Suffolk), 1773, 1774.)

"Tuesday Feb^r 22.⁻⁴ The Court met & adjourn'd to the first Tuesday of June next at 10 o'clock a. m. having first affirmed Judgm^t on the above Complaints, except No. 21, 22 & 73." (*Ibid.*)

June 7th 1774. The Court met according to adjournment, and on the same day adjourned without day. (*Ibid.*)

³ Records of the Superior Court of Judicature, 1773-1774, xxii. 181-228.

⁴ *Ibid.* 1775-1776, xxxiii. 1; Catalogues of Records and Files, etc., p. 94, and the Minute Books therein cited.



1718,—and died in Birmingham, England, 18 October, 1791, at the age of 79. The last of the Chief Justices under the Crown, a Loyalist by birth, education, and instinct, a man of courage, firmness, learning, and character, and an able magistrate, there is a somewhat dramatic fitness in the close of his connection with a Court which, since the beginning of the Province, had been one of the chief impersonations and embodiments of Royal authority. Like Lynde and Trowbridge he was a graduate of Harvard,—his Class being that of 1730; and Oxford gave him the degree of D.C.L. in 1776.

X
Edmund Trowbridge, the youngest of the Bench in service, was appointed, 25 March, 1767, to succeed Chambers Russell, who had died in England, 24 November, 1766. He had been Attorney General¹ from his appointment by Shirley, 29 June, 1749, to his judicial promotion. He, too, was in the Council, in 1764 and 1765. Though of Loyalist proclivities and inclined to the side of prerogative, his learning, ability, and character insured him the respect of the people. He resigned his seat on the Bench in 1775. His name is identified with our system of Common Law. His career at the Bar was distinguished, and he was said to command the practice of every County which he visited.

✓
Trowbridge was born in Newton in 1709,² the son of Thomas and Mary (Goffe) Trowbridge. He graduated at Harvard College in 1728. His mother was the great-granddaughter of Edward

¹ For an account of the controversy as to the method of filling this office by appointment or election, and the proceedings in 1749, see Mr. Goodell's Complete List of the Attorneys General and Solicitors General of Massachusetts, 1688-1790, in 2 Proceedings of the Massachusetts Historical Society for June, 1893, x. 285-291.

² This date, usually given in the published accounts of Judge Trowbridge as that of his birth, is taken from the Newton Town Records which give only the year, with a note referring to "Cambridge record." This may indicate that Judge Trowbridge was born in Cambridge, or that this date is taken from the guardianship papers, now at East Cambridge, issued 7 March, 1725, after the death of his father, in New London, Conn., in 1724, in which Edmund is said to have been then "in his sixteenth year." As Thomas Trowbridge and Mary Goffe were married 3 March, 1709, it is not improbable that 1710 is the actual date of Judge Trowbridge's birth. Unfortunately the Records of the First Church in Newton, which may have preserved the facts concerning Trowbridge's baptism, have perished.

1867.]

EDMUND TROWBRIDGE.

75

Goffe³ who came from England in 1635. His sister Lydia was the mother of Chief Justice Dana.

Washburn says that Trowbridge's name was not to be found in any "Biographical Dictionary of American names" in 1840, and that "during a part of his life he bore the name of Goffe, after that of an uncle."⁴

John T. Morse, Jr., says:—

"At different times he had two names, and appears during a part of his life, at least, to have been known by them both indifferently. He was the adopted child and heir of Col. Edmund Goffe, and took the name of Goffe in early youth; but afterward, toward the time of the Revolution, he reassumed his original name of Trowbridge. It has been suggested in explanation of this, that Col. Goffe was a connection of the regicide judge, and that the Tory proclivities of Trowbridge made him unwilling in such times of revolt to bear the disloyal name. But the theory is a mere surmise, resting on no sufficient authority."⁵

The authority for these statements is somewhat vague, and there are indications of at least inaccuracies in the latter, like another error which makes him ninety-four years old when he died.⁶

Edmund Trowbridge was the grandson of Edward Goffe, an elder brother of Col. Edmund Goffe who was Trowbridge's guardian in his minority, having been appointed as such 7 March, 1725; and, singularly, in 1740, he in turn became the guardian of Col. Goffe, who died 16 October of the same year. In public records he appears at various periods as Trowbridge. In the Records of the Superior Court there is a suit brought, in 1726, by "Edmund Goffe, Lidia Barnard, widow, Edmund Trowbridge, Lidia Trowbridge and Mary Trowbridge, Infants, by the said Edmund Goffe their Guardian, appellants v. William Jennison, appellee."⁷

¹ Cf. Publications of this Society, iii. 451; and Paige's History of Cambridge, pp. 173, 215, 561.

² Sketches of the Judicial History of Massachusetts, pp. 308, 309.

³ The Bench and Bar in Boston, in the Memorial History of Boston, iv. 500.

⁴ Ibid. iv. 580. John Adams calls him, indiscriminately, by either,—Goffe, Works, ii. 196, 200, 201, 204, 282, 284; and Trowbridge, ii. 195, 204, 201, 281,—and so in various other places; and a note on p. 196 states that he changed his name. Sabine quotes Adams.

⁵ Records of the Superior Court of Judicature, July Term (Middlesex), 1726, vi. 72.

The name of Edmund Trowbridge appears also as one of the Selectmen of Cambridge, 1743-1746; as an Assessor and a member of the School Committee in 1744; as Representative of Cambridge at various times from 1750 to 1764; and as one of the subscribers for building the new Meeting-house in Cambridge, in 1753.¹

It is evident, nevertheless, that at some time Judge Trowbridge was called by both names or either, — whatever the occasion of it. This appears by various Court papers.² In the Court Records pre-

¹ See manuscript in Harvard College Library. See also Province Laws, v. 1057-1064, Notes to chap. 50, Act of 1 May, 1779, on the Memorial of . . . "Inhabitants of the First Parish in Cambridge Living on the North side of Charles River in st Town . . . Owners of Considerable Tracts . . . on South side," afterward incorporated as the town of Brighton, as to setting off the South Precinct in Cambridge, — an Act "for the greater convenience of attending the public worship of God and the promotion of the Christian religion;" and Paige's History of Cambridge, pp. 133, 214, 292, 375, 400, 401, 465, 467, 502, and 671 and note.

² (1) An Execution in favor of "Edmund Goffe al^t Trowbridge of Cambridge, Middlesex County, gent." against James Lowdon, in September, 1735; and receipt thereon signed "Edmd Goffe al^t Trowbridge" in his own handwriting.

(2) Execution, *Habere Facias Possessionem*, in favor of "Edmund Goffe alias Trowbridge of Cambridge, Middlesex County, Admir^t &c" v. Buckminster, 1737.

(3) An Execution in favor of "Edmund Trowbridge of Cambridge &c. Eq. otherwise called Edmund Goffe al^t Trowbridge, gent. Admir^t &c," 1740; and receipt thereon signed "Edmund Trowbridge" in his own handwriting.

(4) A Deposition of Nathaniel Gamage, in *Church v. Crackbone*, mentions "Mr. Goffe" also "Mr. Edmund Trowbridge, (within called Goffe)," January, 1740-41.

The Record of the case first above referred to also runs: "Edmund Goffe alias Trowbridge &c" v. Lowdon. (Records of the Superior Court of Judicature, x. 237. See also Suffolk Court Files, cxlxxviii. 40800; ccxlv. 44136; ccxlii. 52332, 52357.)

There are also numerous papers where his name appears at this same period as Trowbridge, — a joinder of issue in a case, signed by him as Counsel for plaintiff, powers of attorney, letters, pleadings, cases, etc. (Suffolk Court Files, xcclvi. 53044; cccliv. 56486; ccclvi. 55963; ccxcii. 66300; ccxcxi. 63181.) He also appears as Trowbridge in Whitmore's Civil List, and in Goodell's List of Attorneys General, already referred to.

The following testimony upon this point, from the pen of one of his associates at the Council Board and upon the Bench is of interest:—

"1768. May 28th. Election; I sent a resignation of my seat at Council

vious to 1740 are a number of cases where Edmund Goffe of Cambridge appears, but examination shows him to have been the uncle.

Judge Trowbridge died in Cambridge, 2 April, 1798, at the age of 84.

Aside from the momentous interest of the occasion, — now become one of the landmarks of our history, — the character of the tribunal and the eminence of the chief actors engaged would make the Trial memorable. There is a certain irony of situation in the relation of the Prosecution to the Defence, — the Crown having with it the passions and feelings of the people, and the Defendants standing, for the time being, as the representatives of Royal Authority; and none the less in the position of the Counsel, — upon one side Robert Treat Paine and Samuel Quincy,¹ and upon the other John Adams and Josiah Quincy, Jr.

MR. HENRY H. EDES communicated an unpublished letter of Cotton Mather, and spoke as follows:—

In looking over some old manuscripts a few days ago I came upon an original letter of Cotton Mather which has been long in my possession, and have brought it with me this afternoon. It is curious, like almost everything else which came from the pen of this eminent Bostonian, whose vanity and hypocrisy were great, and whose accuracy of statement, or the lack of it, was of a kind that would not pass current to-day.

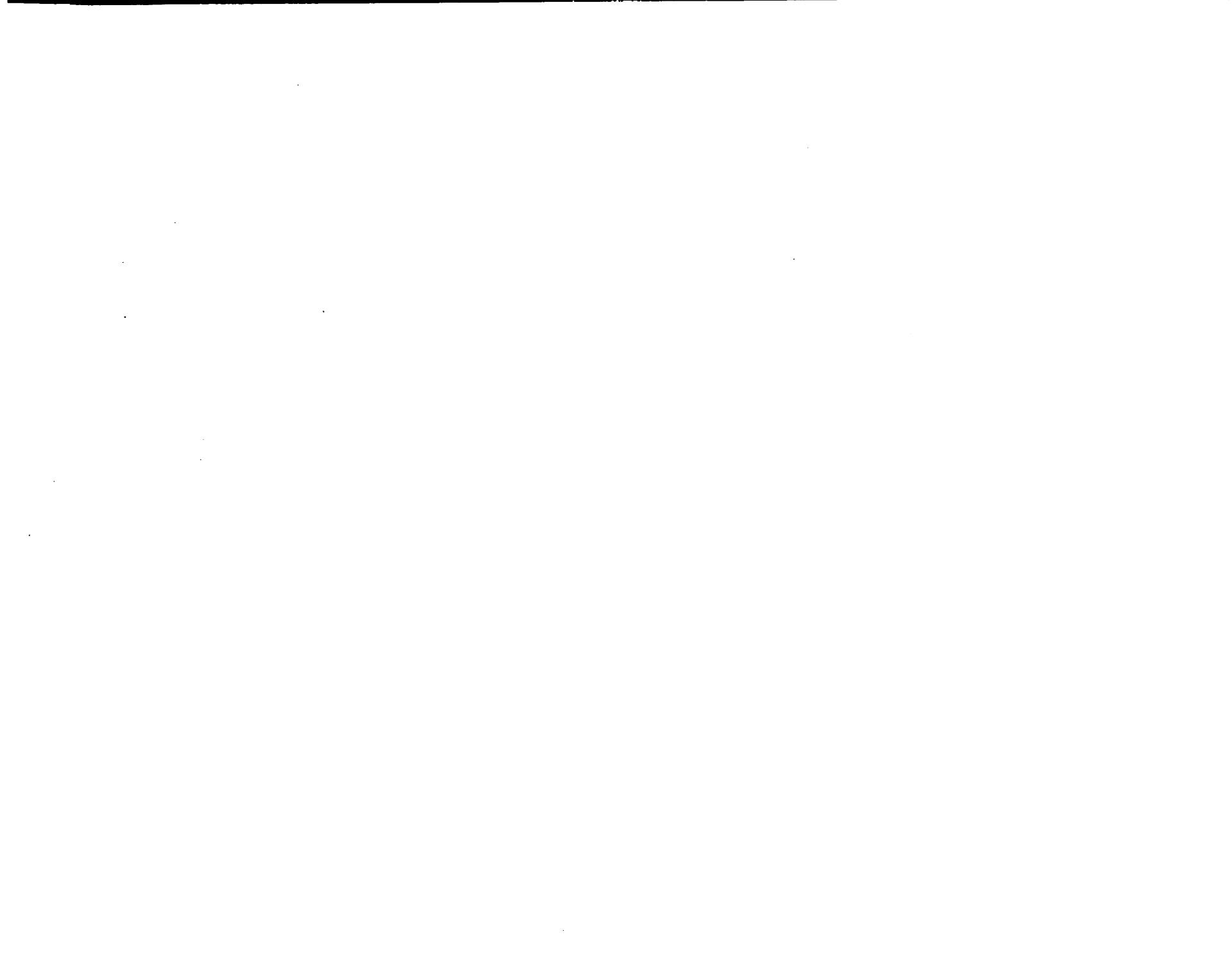
The letter was written to the Rev. Timothy Woodbridge of the Harvard Class of 1675, who is known to have been a correspondent of Mather as early as 1684.² Woodbridge was a son of the Rev.

Board. The Lieut. Gov., Secretary Oliver, Judge Oliver and the Attorney General Goffe, left out. . . . I was 28 yrs. a Counsellor."

¹ 1767. May 13th. Edmund Goffe, alias Trowbridge, Eq., sat as a Judge at Barnstable Superior Court, being appointed in Judge Russell's room in March last." (The Diaries of Benjamin Lynde and of Benjamin Lynde, Jr., p. 101.)

² For a fragment of the Diary of Samuel Quincy, Solicitor-General of the Province, kept in London, in 1776, and an appreciative and discriminating notice of the author, see 1 Proceedings of the Massachusetts Historical Society for January, 1862, xix. 211-223.

³ See 4 Massachusetts Historical Collections, viii. 633.



John Woodbridge of Newbury and Andover, and a grandson of Gov. Thomas Dudley. He was settled over the First Church in Hartford, where he soon connected himself with one of the most influential families of the Connecticut Colony by marrying a daughter of Samuel Wyllys. He was a man of ability, and active and influential in the affairs of Yale College, as I shall endeavor, upon another occasion, to show. When it was proposed to remove that Seminary to New Haven, Woodbridge opposed the plan and urged the selection of Wethersfield as the seat of that nursery of learning. So strenuous was this opposition that, in September, 1718, on the same day that the regular Commencement was held at New Haven, something like Commencement exercises were carried on at Wethersfield with five of the students by Woodbridge, his friend Stephen Buckingham of the Harvard Class of 1698, who is mentioned in this letter, and others of the clergy of the Colony. This contention, however, soon ceased, and Woodbridge joined cordially in the efforts made to advance the interests of the College.

Stephen Buckingham was the minister of Norwalk, Conn., and a son of the Rev. Thomas Buckingham of Saybrook. He married Sarah, daughter of the Rev. Samuel Hooker (H. C. 1653) of Farmington, and granddaughter of the Rev. Thomas Hooker.

The Mr. Edwards referred to in the letter was the Rev. Timothy Edwards (H. C. 1691) of East Windsor, Conn., the father of Jonathan Edwards.

The most interesting feature of this letter, however, is the evidence which it affords that the leading men of the Province kept themselves fully informed of all that was occurring in England which might in any way affect public affairs here.

It will be remembered that for the last dozen years — and especially during the last four years — of Queen Anne's reign there were plots in high places to secure the restoration of the exiled Royal family upon the demise of the Crown, and that Bolingbroke was a principal figure in these plots. The contest for supremacy in the Cabinet between Oxford and Bolingbroke is well known. It culminated in the dismissal of Oxford at a Cabinet Council — the last, I believe, which the Queen attended¹ — which was held

¹ In a letter recently received from Thomas Preston, Esq., F. S. A., Clerk of the Privy Council, referring to Cabinet Councils, he says: "I believe Queen Anne was the last of our Sovereigns who attended them in person." Mr. Pre-

on the twenty-seventh of July, 1714. The session lasted far into the night. The Queen, in consequence of the excitement attending this meeting, became suddenly ill, and on the thirtieth suffered a stroke of apoplexy. She lingered until the morning of the first of August, when she expired.¹ With her last words and the presentation of the White Staff, she had invested Shrewsbury with the office of Lord High Treasurer, thus dealing a fatal blow to the hopes of the Jacobites. Bolingbroke's supremacy was short-lived, and he dared not act upon the advice of Atterbury, who would have proclaimed the Pretender at once, saying, with an oath, that there was not a moment to be lost. Wiser counsels prevailed, the Elector of Hanover was proclaimed, and the Crown of England passed peacefully to the House of Brunswick.

The text of the letter is as follows: —

BOSTON. 20th xi. 1714

Reverend Sir,

Until just now, I was not apprised of any opportunity, to do anything towards answering your Desire, that I would communicate o' last Intelligence, about the state of affairs on the other side of the Water.

And now I have this Opportunity, it must be complained, That y^e communication we have had from thence has been so slender, as to leave us capable of saying very little, but what you have in the public News-Letter, and what every body has heard of.

The King arrived,² I think, on the day when we proclaimed Him here. And this is the last Advice we have.

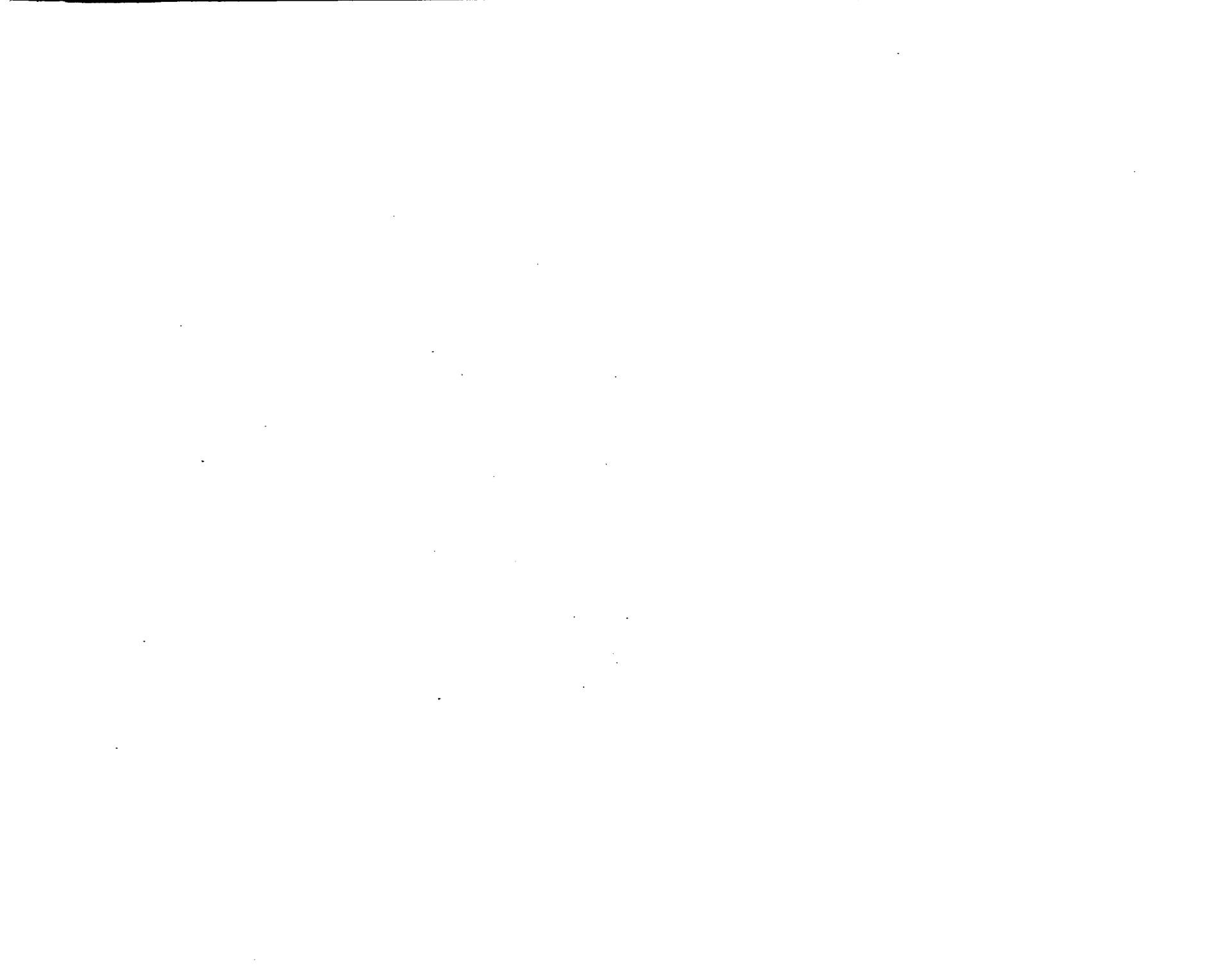
ton also remarks upon the frequency with which historical writers confound Cabinet Councils with sessions of the Privy Council.

¹ The following is extracted from a contemporary announcement of the Queen's death: —

"London, August 1. [Sunday.]

"This Day, at half an Hour past Seven in the Morning, died our late most Gracious Sovereign Queen Anne, in the Fiftieth Year of Her Age, and the Thirteenth of Her Reign; a Princess of exemplary Piety and Virtue. Her Majesty complain'd on Thursday last of a Pain in Her Head: The next Day She was seized with Convulsion Fits, and for some time lost the use of Her Speech and Senses, which, tho' She afterwards recovered upon the Application of proper Remedies, She continued in a very weak and languishing Condition till She expired." — (The London Gazette, No. 2247, From Saturday, July 31, to Tuesday, August 2, 1714.)

² The King landed at Greenwich, on the eighteenth of September, 1714. The news of Anne's death reached Boston on Wednesday, 16 September (Boston News-Letter, No. 544). The obsequies of the Queen were celebrated on the morning of Wednesday, the twenty-second, by the discharge of minute-guns



A mighty & wealthy Tory, S^r Matthew Dudley¹ writes to one here —

"We were on the very Brink of Ruine & on y^r very point of being delivered up to France. But it pleased Almighty God mercifully to Infatuate y^r ministry, & to take the Queen to Himself, and to give us in y^r succession a King, of whom we have a reasonable prospect, that he will deliver not us only, but all Europe also, from y^r French Tyranny."

S^r Matthew has now given you the summe of all the Intelligence yett arrived unto us.

at Castle William. At eleven o'clock Governor Dudley came hither from Roxbury, with a military escort, and was met at the Town House by Lieutenant Governor Tailer, members of the Council, and a great number of prominent citizens and merchants, "besides a very great concourse of People. . . . The Regiment of the Town, and another Regiment of Foot, being drawn up under Arms on the Parade in Kings-Street, before the Town-House. The Balcony of the Council-Chamber being Hung with Scarlet Cloth, at 12 a Clock His Majesty was . . . Proclaimed with loud acclamations." This was followed by the discharge of three volleys by the troops of horse and foot, and three rounds of artillery from the Castle, the Batteries, and the Ships in the harbor, amid the ringing of bells. At two o'clock a public Dinner was served to the Governor and the vice-regal Court, who returned in the evening to the Council Chamber, where healths were drunk to the King and the Royal family. "The Town-house, and several Principal Streets [were] finely illuminated beyond what ever was known in the English America." On the twenty-third, in accordance with an order of the Governor and Council, Cotton Mather preached, at the Thursday Lecture, "a very good sermon" from Isaiah vi. 1, appropriate to the "Solemn Occasion" of the Queen's death. The Governor and Council then went into mourning. On the evening of the same day (Thursday) Jonathan Belcher, afterward Governor of the Province, "made a very splendid Entertainment for His Excellency the Governor and Council, with a great many other Gentlemen, at his House in Hanover Street, where were drank His Majesties Health, the Prince, Royal Family, &c. the House being all over very finely illuminated." (*Ibid.* No. 545.) This house occupied a part of the site of the present American House. Here, formerly, lived Judge John Saffin (see ante, I. 57, note) who, with wife Rebecca (Lee), for £350 "in current money of New England," sold the estate, then said to contain three quarters of an acre, to Francis Foxcroft, 24 September, 1691 (Suffolk Deeds, xix. 237). Foxcroft sold to Jonathan Belcher, 31 December, 1706, the consideration named in the deed being £800 "in current money of New England" (*Ibid.* xxii. 380). While occupying the Executive Chair of the Province Belcher sold this property, for £2,000, "in good publick Bills of Credit of the province," to Joseph Green, 15 March, 1734 (*Ibid.* I. 113).

¹ Sir Matthew Dudley was of the Clapton, Northamptonshire family. His father, William Dudley, was created a Baronet 1 August, 1690. Matthew, his eldest son and successor, was baptised 6 October, 1691; married Lady Mary

"Tis a Great Thing, that we have so great a King, so little in the French Interests.

It appears evidently that he is looking about for a stick, to beat the Dog. And so probable is his finding it, that your politicians expect the breaking out of a New War in a little while.

One of the most expressive Things, which discover the Temper and Freedom of a Great many people, is a Book enntituled, *The Conventicle*.

Because I cannot send you the Book itself, I will Transcribe & enclose a few select passages; which doubtless you will count bold enough, & coarse enough; but they are some of the Roars of the Waves of ye Betrayed & enraged nations.

The Memorable First of Aug^{ust} makes a Revolution, rather greater than that of November twenty six years ago.¹ And it is made hitherto, so peaceably, & in so strange a manner, that your common News-Writers, who do not use to burden their papers with too much piety, can't forbear frequent Confessions, *That it is y^r work of Almighty GOD*.

What o' share is like to be in the consolations & advantages of it, is as yett unknown unto us.

I wish, none o' people have written Letters home, unto y^r Late Ministry, which were so far from dictated by a prophetic Spirit, that when they come to be expos'd, the writers will find very inconvenient conseq^uences.

You will communicate unto o' worthy Brothers Mr. Buckingham & Mr. Edwards, —

May the glorious Lord continue you at your good work, & graciously direct & prosper you in it all.

I am
fr,
Your Brother
& Serv:
Mr. WOODBRIDGE.

CO. MATHER.

O'Brian, youngest daughter of the Earl of Thomond; was several times returned to Parliament, at one time representing the County of Huntingdon; appointed a Commissioner of the Customs in 1706, turned out in 1712, but was reinstated by George I.; and died in office and in London, 18 April, 1721. He was a Fellow of the Royal Society to which he was admitted 26 January, 1703-4. To the Society's Transactions (Vol. XXIV.) he contributed, in February, 1706, a paper giving An Account of Insects in the Barks of Decaying Elms and Ashes. (Burke's Extinct and Dormant Baronetcies; Province Laws, vii. 50-52, 306, 434, 635.)

¹ The Great Revolution in England. The Prince of Orange landed at Torbay, 5 November, 1688.

The Hon. JAMES COOLIDGE CARTER, LL.D., of New York,
was elected an Honorary Member.

The Rev. Dr. CHARLES CARROLL EVERETT communicated
a Memoir of Governor Russell which he had been requested
to prepare for the Transactions.

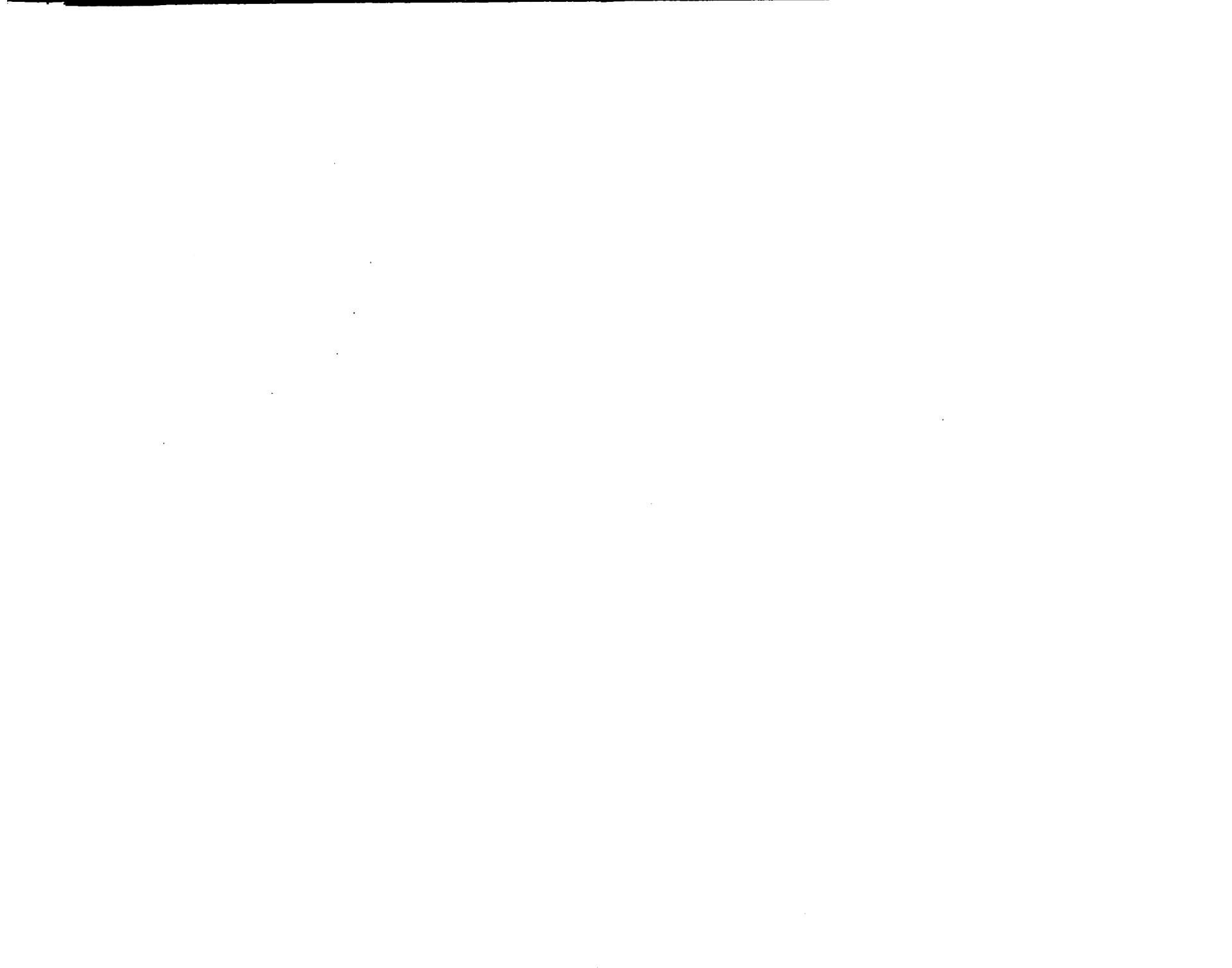
POSTSCRIPT.

Since the Transactions of this Meeting were printed, Mr. Noble
has sent to the Committee of Publication the following extract
from the record in the Minutes Book of the Trial of Captain
Preston: —

Thomas Preston Esq; now resident in Boston in the County of Suffolk, being indicted,¹ at last term, with sundry other persons, in five several Indictments, for being present at, and aiding & abetting the murder of Samuel Maverick, Samuel Gray, Crispus Attucks, James Caldwell, & Patrick Carr, at the time & place, and in the manner, set forth in the said five several Indictments, is now in this present term, brought & set to the Bar, and arraigned, and upon his arraignment, pleads to each of the said several Indictments, not guilty and for Trial puts himself upon God & the Country. A Jury is therupon sworn to try the said five several Issues, Mr. William Frobisher foreman, & fellows, namely Joseph Trescot, Neal M'Intire, Thomas Mayo, Josiah Sprague, Joseph Gaillard, Jonathan Parker, Gilbert Deblois, Phillip Demarques, William Hill, William Wait Wallis, and James Barrick, who having fully heard the Evidence for the King with the prisoners Defence, go out to consider thereof, and return with their Verdicts and upon their oath say that the said Thomas Preston is not guilty of aiding & abetting the murder of Samuel Maverick, and that he is not guilty of aiding & abetting the murder of Samuel Gray, & that he is not guilty of aiding & abetting the murder of James Caldwell, & that he is not guilty of aiding & abetting the murder of Patrick Carr, and that he is not guilty of aiding & abetting the murder of Crispus Attucks. It is therefore Considered by the Court that the s^t Thomas Preston go without Day (Minutes Book, No. 91, of the Superior Court of Judicature, covering the August Term (Suffolk), 1770).

¹ The original Indictment is preserved in the Suffolk Court Files, doct. 382,782. See ante, pp. 68-70.

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¹ The original Indictment is preserved in the Suffolk Court Files, decr. 101, p. 5, see also p. 68, 70.



Engraved for The Colonial Society of Massachusetts
from a photograph from life



MEMOIR
OF THE
HON. WILLIAM EUSTIS RUSSELL, LL.D.
BY
CHARLES CARROLL EVERETT.

WILLIAM EUSTIS RUSSELL was born in Cambridge, Massachusetts, 6 January, 1857. He was the son of Charles Theodore and Sarah Elizabeth (Ballister) Russell. He inherited from his mother's side a strain of French Huguenot blood, but in other respects his ancestors were of New England stock. His father's family had lived in New England for six generations.

Mr. Russell was educated in the public schools of Cambridge, and graduated from Harvard College in 1877. His career in college was in no respect a marked one. Though not especially brilliant as a scholar, he was a man whom his instructors liked to see in their class rooms. The opinions expressed by his classmates vary according to the personal relations in which they stood to him. One says that though he was not very prominent in the class, his classmates were not surprised at his later success. Another speaking from a warmer intimacy exclaims: "He was the class!" At graduation his class separated without electing the usual class officers. Russell remained as Class Secretary, — its only special representative.

After graduation, our late associate studied law with his father and in Boston University. The study of law appealed perhaps more to his practical interest than collegiate studies, and he graduated, in 1879, with the highest honors. He was admitted as an attorney at the Suffolk Bar in 1880, and entered upon the practice of his profession as a member of the firm of C. T. and T. H. Russell, the firm being then composed of his father, uncle, and elder brother. For some years he continued the successful prac-

tice of his profession. He was from the first, however, greatly interested in politics. His earliest political speeches were made in the presidential campaign of 1880, the year in which he graduated from the Law School. In 1881 he was elected as an independent candidate to the Common Council of the City of Cambridge. His nomination was wholly informal. It is said that he knew nothing of the matter till he went to the polls to cast his vote. He then found that friends were circulating what were called "stickers" bearing his name. He was elected by a majority of one vote. The next year he was elected a member of the Board of Aldermen, which position he held for two years.

At the time when Mr. Russell became an active worker in the municipal affairs of Cambridge, there was great need of reform in the administration of the City government. Taxes were high, the public debt was rapidly increasing, and the whole management of affairs was lax. This at least was the view of Russell and of those who acted with him. As a member of the Board of Aldermen, he opposed so forcibly the methods by which the affairs of the City were managed, that he was recognized as the natural leader of the Reform movement; and in 1884 he was elected Mayor upon a wholly non-partisan ticket.

This election forms an epoch in the history of Cambridge. It was the beginning of that system of non-partisan administration of municipal affairs which has been followed ever since. It thus introduced business methods in the place of political methods. One of the chief mottoes of the new movement was "Pay as you go." This principle the reformers did not apply to expenses incurred for permanent works, like the water main or the bridge to Boston; they meant that each year should pay for its own proper expenditures. The principle is an obvious one, but it had, at the time, a special and important significance. It shows the prevalence of a healthy sentiment in Cambridge that an election could be won on the strength of a platform so abhorrent to the easy-going methods that are too common both in public and in private life.

Mayor Russell's administration justified his selection as the representative of the new movement. In his Address at the beginning of his second year of office he said, —

"The year begins with an almost empty treasury, with unpaid bills of over \$20,000, with a floating debt for current expenses of \$306,040

(including a deficiency of \$35,040 to the City Sinking-fund), and with the example before us of a year when expenses had largely exceeded appropriations, and a higher tax-rate had been fixed than for five years."

He went on to picture a very different state of things, — a surplus in the treasury of nearly \$45,000, the bills for the year wholly paid, and the floating debt funded. The Address states further that —

"More money has been spent on our schools, more work done on our streets, more lamps have been set, more sewers have been laid, more has been done for health, fire and police protection, and more for the gentle, kindly care of our helpless poor during the past year than for many years."

The administration of Mayor Russell was in many respects an interesting and an important one. It was while he was Mayor that the City voted that no licenses should be granted to sell intoxicating liquor to be used as a beverage. Mayor Russell did not believe in such legislation, and of this he made no secret. He felt, however, that since the law existed, it was his duty to see that it was carried out. He said to his colleagues that they were not responsible for the law, but that they were responsible for its enforcement. It was a remarkable testimony to the fairness and firmness of his administration that the believers in Prohibition were among his warmest supporters. They preferred him as Mayor to a No-License man in whose executive ability they had less confidence.

Mayor Russell, in his earlier Inaugural Addresses, had urged, as some of his predecessors had done, the need of a suitable building for the Public Library, and had expressed the wish that money might be given to the City for that purpose. His appeal was responded to with a large generosity that gave more than had been asked. His friend, Frederick H. Rindge, though no longer a citizen of Cambridge, gave not only the site and building for the City Library, but also founded a Manual Training School, gave the site for the High School, and gave to the City the money needed to build a City Hall that should be worthy of it. Mayor Russell was a member of the Committee named by Mr. Rindge to carry out the plans that his splendid munificence had suggested,



and the beauty and satisfactoriness of the architectural results are, at least in part, due to his influence.

Another incident of the administration of Mayor Russell should be noticed. It was during the second year of his mayoralty that a Strike occurred among the *employés* of the Company that owned and controlled the Cambridge system of street cars. This was then distinct from the Boston system, and thus the Strike concerned Cambridge alone. It was conducted with all the passion that is common in such movements. The large number of men who were concerned in the Strike were full of rage and threatened violence. They vowed that no car should be run until their demands were satisfied. A large part of the populace sympathized with them, and were ready to join with them in any conflict that should occur. In the midst of this excitement the President of the Company notified Mayor Russell that at a certain hour he proposed to run a car to Boston, and that he demanded protection. It seemed as if the attempt would introduce a bloody conflict. Mayor Russell doubted the expediency of the attempt while the excitement was so fierce. The Company, however, insisted on carrying out the plan. Finding that the collision could not be avoided, Mayor Russell showed his energy and good judgment by taking measures that would prevent the worst results. He imported a large police force from without by which the would-be rioters were overawed, and the car accomplished its circuit. I refer to this incident on account of its importance as illustrating the methods of the man, and also because his momentary hesitation has been severely criticised. It seems to me, however, to have been natural, if not commendable, on the part of a young man unused to scenes of blood. One of the fairest and most intelligent of his political opponents has said to me that he considered it only praiseworthy. Nothing could better illustrate the character of Russell's career than that this incident should have been the occasion of the only criticism of his official conduct that I remember to have heard from any whose blame was not equivalent to praise.

Mr. Russell was elected Mayor for four successive years, filling the office from 1885 to 1888 inclusive. Two years he was the only candidate.

In the Presidential election of 1884 Mr. Russell took a prominent part, and was made President of the Middlesex Democratic Club.

During the last year of his Mayoralty he was nominated for the office of Governor by the Democratic State Convention, but failed of election. The following year he was renominated with the same result, except that he lacked much less of election. In 1890 he was elected Governor of Massachusetts by nearly ten thousand plurality. In the same election the majority of the democratic candidates for Congress were also successful. He was re-elected in 1891 and 1892. If, in his first election, he was borne into office by a great tide of Democratic success, to which, indeed, he had given much of its impetus, his success continued after this tide had ebbed. In 1892 he was the only Democrat upon the State ticket elected.

Although, during the three years of his administration, Governor Russell was hampered by a Council in which only one member was a Democrat, and although the Legislature had a large Republican majority, few Governors have made their influence more strongly felt. All his vetoes were sustained and some of his recommendations were adopted. His Messages to the Legislature omitted the summaries of the statistics and recommendations contained in the accompanying Reports of other officials by which such documents are so often burdened. They were mainly devoted to the discussion of fundamental principles of legislation and administration, and thus they became State Papers of real value. He found the State largely governed by Commissions. These Commissions were independent of one another and of the Executive. Nowhere was there personal responsibility and subordination. Even the Warden of the State Prison had not the power to dismiss one of his subordinates. If the State had been, as he admitted it had been, on the whole well governed, it was in spite of this system. For nothing did he strive more earnestly during his administration, than for the introduction into the management of the State of the personal responsibility that was so conspicuously absent. It is not strange that his own experience led him to reckon the Governor's Council one of the elements in the machinery of government that tended to make impossible the personal administration of public affairs that was his ideal.

The corrupting influence of the Lobby was the object of some of Governor Russell's most earnest paragraphs, and he urged legislation that should restrict its activity. He urged also the abolition of

the tax qualification for the voter and the property qualification for the Governor. Among his positive recommendations, none was urged with more force than the substitution of general for special legislation. These recommendations, and others made by him, were directed towards the securing of personal responsibility in officials from the Governor down, of democratic equality before the law, and of automatic simplicity of administration. By means of this last he would avoid the necessity of a multiplicity of laws, costly and sometimes corrupt in their making and contradictory in their tenor, permitting here and forbidding there, with little cause for enactment save chance or favoritism.

The career of Russell, as I have imperfectly indicated it, shows that he possessed unusual popularity. Indeed, when it is remembered that his public career was confined to his own State, the extent as well as the intensity of his popularity seems something phenomenal. In processions in other States where he represented this State as Governor, he was followed by special and enthusiastic applause. In Chicago, as in New York, wherever he went, there was always great pressure to catch a sight of "Billy Russell," as he was familiarly called. It is impossible to account fully for this wonderful popularity. To say that he deserved it is, unhappily, not to explain it.

Governor Russell was extremely fortunate in the time of his political activity. The Democratic party had had a revival, and a revival under its best form. Under the leadership of Cleveland it promised the country an administration the object of which should be, not the advantage of partisans or of certain classes, but of the Nation. Russell was believed to be a man of the same stamp as Cleveland, whose personal friend he became. He was believed to be both capable and honest. This Democratic revival does not, however, explain his special popularity; for, as we have seen, he was elected when his party was defeated. He was elected when even Cleveland failed to carry the State.

Mr. Russell was doubtless a politician, and a politician who understood the business better than many who pride themselves on being practical. His chief art, so far as I can learn, was an unfailing tact by which he was able to adapt himself to the persons and the communities with which he was brought into relation. He could be young with the young and mature with the thoughtful.

This was perhaps his nature no less truly than his art. He had a wonderful memory for faces and for persons. If he had once met a man, he not only recognized him on a second meeting, but recalled the circumstances of their former interview, and was able to take up the conversation where it had been left. When he was to speak in a town, he made himself thoroughly familiar with its affairs, so that men wondered that this young politician knew things about their business that they did not know themselves. He not only made such preparation for special occasions, he was all the time eager for facts. A friend who travelled with him in the South tells me that he was unwearied in gathering information in regard to the region that they visited. A fact once learned was his forever. What he knew, he knew, and he knew why he knew it. If in a public meeting one of his statements was questioned, he was ready with his authority. On one such occasion he referred a Republican objector to Blaine's History, which he recommended to him as extremely interesting reading.

His adaptation to circumstances and persons does not mean that he stooped to cater to the passions and prejudices of those to whom he spoke. He insisted that the management of his political campaign should be kept at a high level. If at any time when the party leaders were in council a proposition was made to take advantage of some story in regard to a political opponent by which his reputation might be injured, Russell would put his foot on the plan in a moment. He would say that he would rather be beaten than to win by such means; and he would add, "Think of the man's family; and perhaps the story is not true, after all."

The theme to the discussion of which Mr. Russell's political speeches were most largely directed was the policy of Protection. The fallacy of this doctrine he exposed and its unfairness he denounced. His campaigns were campaigns of education. His hearers were instructed as well as charmed. His Speeches that have been collected and published are filled with thought and information. He attacked Protection just as openly in a manufacturing town as he did in a commercial centre. He denounced the Silver heresy no less strongly in Virginia, in the midst of a population that had been carried away by it, and with one of its prominent defenders on the platform by his side, than he did in Massachusetts.

Russell early learned that frankness is the best policy, — a lesson that many politicians never master. A delegation once called on him to urge the appointment of their candidate to an important office. Russell heard all they had to say, and then told them that he agreed with them in having a high estimation of their candidate, but that he considered him not up to the position for which they urged him. They went out without a word of reply, but were heard to say among themselves that the Governor was about right. Upon another occasion a delegation of colored men came to protest against the treatment they had received from him. He had asked them to name a candidate for some office; they had sent in their recommendation, but their man had not been appointed. Russell put them into good humor by a witty if inelegant characterization of their man, and then lectured them soundly for having recommended such a person. He told them that they had insulted him in so doing. They, too, went out, feeling that the Governor knew what he was about.

Such things, instead of lessening Governor Russell's popularity, seem to have increased it. They went to confirm the impression upon which his popularity to a good degree rested. If I may use the word that means so much in the dialect of the New Englander, men recognized the fact that Russell was "smart." He was so young to be Mayor, so young to be Governor, so young to know so much and to have such self-assertion. All this pleased the people greatly. It was not merely the fact that he was young; he seemed the impersonation of youth. He was so lithe and fresh. His face was interesting rather than handsome. His speech was winning and convincing rather than eloquent. His voice had great carrying power rather than strength. Nothing could be more unconventional than his attitude on the platform. He would sometimes stand with his arms akimbo, and as he turned from side to side, would do it, swinging round upon his toes. I have seen him in this way address a University audience in Cambridge. Another favorite attitude was to stand with his right hand on his hip while he made gestures with his left. These things sound grotesque in the telling. They would have driven a teacher of oratory wild; but somehow, whatever he did, became him. He put a certain grace into it all; at least his personality was felt through it.

After all, it was this personality that affected those with whom he came into contact, and this no analysis can present. Wherever he went, he carried this charm with him. Young men were wild with enthusiasm for him. Life-long Republicans would sometimes say to their sons, "Yes, you may vote for him. I cannot; but I will not vote against him." Every triumph thus accomplished helped to swell the story of his success; so that those who had not seen him were eager to meet him and put themselves under the same spell.

At the close of his term of office as Governor, Mr. Russell returned to the practice of his profession, and into it he threw the same energy that had marked his public service. The confidence which men had in his sagacity and skill brought him an immense practice, and he was equally successful with the Court, with the Jury, and in consultation. His legal business was, however, often interrupted by calls which were too attractive to be resisted. In 1894, he delivered the annual Oration before the Yale Law School. The next year he addressed the students of the University of Michigan. In April, 1896, he addressed the National Association of Democrats at Monticello, upon The Work and Principles of Jefferson. He contributed to The Forum for May, 1894, a valuable paper entitled A Year of Democratic Administration.

In the spring of 1896 Mr. Russell declined to be a delegate to the Democratic National Convention at Chicago, and refused to be thought of as a candidate for the Presidency. Later he decided to attend the Convention, hoping to be able to exert some influence. It was probably the most painful experience of his life. He had been a Democrat from his childhood up. His father held an honorable place in the party as well as in civic life, and from him young Russell learned the lesson of party loyalty, and doubtless learned to honor the party in him. He was a partisan, but he loved his party as no mere partisan could do. He saw it assuming the position in which the best hopes of the country could be placed upon it. His patriotism and his partisanship became one. He went to Chicago to find his dearest hopes disappointed. The politicians who had unwillingly followed the lead of Cleveland till they secured power, turned against him in Congress, and thwarted his most cherished plans. Now, in the Convention at Chicago, they were wild with joy because they could cast him off.

forever. Russell found the party that had been his hope and his pride stooping to alliance with the most extravagant elements of American politics, and, for the sake of success, adopting the most perilous financial heresy. He strove vainly to check the disastrous plunge of his party into disgrace and ultimate failure. Never did he appear nobler than when he rose to protest against the mingled fanaticism and demagogism that were the rulers of the hour. He had always spoken his real thought without regard to the prejudice of his hearers, but never had he addressed so hostile a body as this. Respect for him secured a hearing. His words were at the time vain, but they deserve and will receive study and admiration. In his speech he said, —

"The Mother State has taught us, her children, to place principle above expediency, courage above timidity, and patriotism above party; and in the cause of right and justice not to flinch, no matter what the majority or however overbearing its demands."

The Convention listened, but swept on in its mad career. He wrote to his wife: —

"I had no idea how hard and distasteful this task would be. I have but one comfort in it. I know that I have done my duty with fidelity."¹

Shortly after his return to Boston, Mr. Russell started with two friends for a salmon-fishing excursion in Canada. He arrived in the camp in the evening of the fifteenth of July, 1896, and the next morning was found lifeless in his bed. The end had come apparently without pain or premonition. His grief at the downfall of his party completed the work which too great assiduity in his profession had begun.

Mr. Russell resided all his life in Cambridge. As a citizen he was charitable and public-spirited; as a friend and neighbor he was respected and beloved. On the third of June, 1885, he married Margaret Manning, a daughter of the Rev. Joshua Augustus Swan, and left two sons and a daughter.

¹ This extract from the last letter that Governor Russell wrote to his wife is taken from the Memorial Address delivered by Professor Charles Eliot Norton at the invitation of the City of Cambridge. This is published in the Harvard Graduates' Magazine for December, 1896, v. 177-194.

I will not venture to speak of what Governor Russell's death meant to his family and to the multitude of his personal friends. It meant not less to the State. Though some of the principles for which he contended seem to be forgotten by most, they are as true and important as ever. The Nation will doubtless at some time again recognize their worth; but where is the statesman as young, as strong, and as well beloved, who will rally the people to their support?

JANUARY MEETING, 1898.

A STATED MEETING of the Society was held in the Hall of the American Academy of Arts and Sciences on Wednesday, 19 January, 1898, at three o'clock in the afternoon, President WHEELWRIGHT in the chair.

The Minutes of the Meeting in December were read and approved.

The following letter, received since the last Stated Meeting, was communicated by the Corresponding Secretary:—

New York, December 17, 1897.

JOHN NOBLE, Esq., Corresponding Secretary.

DEAR SIR,—I have your communication of the 15th inst. informing me of my election as an Honorary Member of The Colonial Society of Massachusetts.

I fully appreciate the honor thus conferred upon me, and, regarding it as a high distinction, I gratefully accept it.

Very truly yours,
JAMES C. CARTER.

The Council having proposed to the Society certain amendments to the By-Laws to authorize the election of a limited number of Corresponding Members, and due notice thereof having been given in the notification of this Meeting, the following action was taken, unanimously, on motion of Mr. ANDREW MCFARLAND DAVIS:—

Voted, That the Amendments to the By-Laws proposed by the Council at this meeting are hereby adopted, so that Articles 1 and 2 of Chapter II. and Article 4 of Chapter XI. will read as follows:—

CHAPTER II.

MEMBERS AND DUES.

ART. 1.—The number of Resident Members of the Society never shall exceed One Hundred. They shall be elected from among the citizens of Massachusetts, and shall cease to be members whenever they cease to be residents thereof. The number of Corresponding Members never shall exceed Fifty; and the number of Honorary Members never shall exceed Twenty. They shall be elected from among non-residents of Massachusetts, and shall cease to be members if at any time they become both citizens and permanent residents thereof.

No person shall be eligible to membership who cannot prove, by documentary evidence satisfactory to the Council, his lineal descent from an ancestor who was a resident of the Colonies of Plymouth or the Massachusetts Bay.

Resident Members only shall be eligible to office or be entitled to vote or to take part in the business of the Society.

ART. 2.—A book shall be kept by the Recording Secretary, in which any member may enter the name of any person whom he may regard as suitable to be nominated as a Resident, Corresponding, or Honorary Member, — it being understood that each member is bound in honor not to make known abroad the name of any person proposed or nominated; but no nomination shall be made except by a report of the Council at a Stated Meeting of the Society. No nomination shall be acted upon at the same meeting to which it is reported; nor shall more than one candidate for Honorary Membership be reported at any meeting.

CHAPTER XI.

THE COUNCIL.

ART. 4.—It shall report, at its discretion, nominations for Resident, Corresponding, and Honorary Members, and act upon all resignations and forfeitures of membership.

MR. FREDERICK LEWIS GAY made the following communication:—

The full-length portrait of Sir William Pepperell, which has been in the possession of the Essex Institute since 1821, is well known through many reproductions, notably the engravings of Buttre and of Kilburn, the latter appearing in the Memorial History

of Boston. The artist's name does not appear on the canvas, and is said to be unknown. Wineor twice makes this statement, relying on the authority of the late Dr. Henry Wheatland. I have brought for the Society's inspection an engraving which seems to answer conclusively any question as to the painter of the portrait. It is engraved in mezzotint on copper by Peter Pelham, of Boston; but it is not noticed in J. Chaloner Smith's description of Pelham's works, and I have not found it mentioned elsewhere. A comparison will show that it is undoubtedly engraved from the Essex Institute portrait. The inscription¹ reads as follows:—

"Sir William Pepperrell Bart^d, Colonel of one of his Majesty's Regiments of Foot, who was Lieutenant General and Commander in Chief of the American Forces Employ'd in the Expedition against the Island of Cape Breton which was happily Reduced to the Obedience of his Britannick Majesty June the 17, 1745. J. Smitbert Pinxit: P: Pelham fecit et ex: 1747."

MR. ANDREW MCFARLAND DAVIS read the following paper:—

A CONNECTICUT LAND BANK.

AT a former meeting of this Society, I submitted an account of an experiment made in 1740, in the Province of the Massachusetts Bay, by a Company having no capital, organized for the purpose of furnishing a paper currency, the credit of which was based upon mortgages given to the Company by borrowers of its notes.² At that time I alluded briefly to the fact that the theory upon which the Land Bank of 1740 was projected had been previously discussed, and that an attempt had been made to organize in this Province a similar company in 1714, the proposed Bank of that date being in turn founded upon a project originally submitted to the Council of the Massachusetts Bay in 1686 and for a time favorably considered by that body. Elsewhere, I have given in greater detail the circumstances attendant upon these attempts to establish Land

¹ Since this paper was read to the Society another impression of this plate has been discovered in the collection of our associate Mr. Denison Rogers Slade. The inscription on Mr. Slade's copy is identical with that on my own except that Mr. Slade's print bears the following additional words, — in the space between the names of Smitbert and Pelham: " Sold by J: Buck in Queen street Boston."

² Provincial Banks: Land and Silver, communicated at the Stated Meeting in January, 1886, Publications, iii. 1-20.



of Boston. The artist's name does not appear on the canvas, and is said to be unknown. Winsor twice makes this statement, relying on the authority of the late Dr. Henry Wheatland. I have brought for the Society's inspection an engraving which seems to answer conclusively any question as to the painter of the portrait. It is engraved in mezzotint on copper by Peter Pelham, of Boston; but it is not noticed in J. Chaloner Smith's description of Pelham's works, and I have not found it mentioned elsewhere. A comparison will show that it is undoubtedly engraved from the Essex Institute portrait. The inscription¹ reads as follows:—

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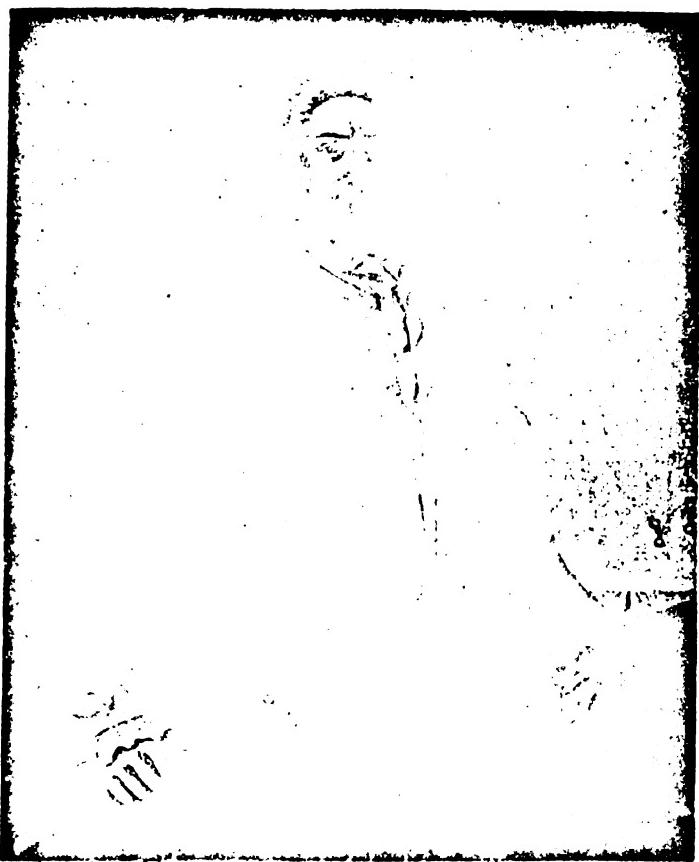
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¹ A copy of this portrait was read to the Society in the expression of this plate L. S. — is now in the collection of our Society, Mr. Denison Rogers Slade. The portrait in Mr. Slade's copy is identical with that on my own except that Mr. Slade's print bears the following signature, to be — in the space between the names of Smibert and Pelham: "Engraved for the Colonial Society of Massachusetts from a new print in the possession of Frederick Smeathen Esq: 1867."

² Provincial Banks: Land and Stock, etc., communicated at the Stated Meeting in January, 1865, Publications, iii. 1-40.



Sir William Pepperell Bart., Colonel of his Majesty's Regiment of Foot, who was Lieutenant General and Commander in Chief of the American Forces Employ'd in the Expedition against the Island of Cape Breton which was happily Reduced to the Obedience of his Britannick Majesty June the 17. 1745. J. Smibert Pinx: P: Pelham fecit et ex: 1747.

Engaged for the Colonial Society of Massachusetts
from a new print in the possession of
Frederick Smeathen Esq: 1867.

Banks in 1686 and 1714.¹ My purpose in referring at this time to the earlier projects is to recall to your minds their similarity to the actual experiment made in 1740. In the account of the transactions of a Connecticut Company, organized in 1732, which forms the subject of this communication, certain resemblances to the Massachusetts Land Bank will be easily detected, the origin of which may perhaps be attributed to the discussions of 1714 and 1686. In each case the intention, apparently, was to form a Company which should furnish bills somewhat similar in character to the bills of public credit then in circulation. The currency of these bills was to be attained by lending them to borrowers who would agree to receive them in trade and commerce, and who were to furnish adequate security for their loans, the general idea being that real estate was best for that purpose. The borrowers were to constitute the Company, which was to have no Capital Stock paid in, and their voice in the management of its affairs was to be proportionate to their borrowings.

The Connecticut Company did not originally pose as an organization of this description. It was chartered in 1732 by the Connecticut Assembly, under the title of The New London Society United for Trade and Commerce. It is evident from the language of the Charter that the intention of the Assembly was to permit the formation of a joint-stock company, in which the members should participate in proportion to the amount of their investments. The alleged purposes of the Society are sufficiently indicated in its title. If upon an analysis of the affairs of this Company we shall find in its actual organization enough points of identity with the schemes of the proposed Banks in this Province to indicate a community of origin, we shall add to the proof already at hand another instance of the far-reaching influence of the London pamphlet² which furnished the methods for the

¹ Currency Discussion in Massachusetts in the Eighteenth Century. Quarterly Journal of Economics for October 1896, and January 1897, xi. 70-91, 186-191.

² A Model for Erecting a Bank of Credit: With a Discourse In Explanation thereof. Adapted to the Use of any Trading Countrey, where there is a Scarcity of Money: More Especially for his Majesties Plantations in America. Out Communique of Moline. London, Printed by J. A. for Thomas Cawcerl at the Three Leggs in the Pauldry, over against the Stock-Market, 1694.

Hatchinson refers to this pamphlet as having been printed in 1694, and the

projects of 1686 and 1714 and for the experiment of 1740. In order that we may reach a conclusion upon this point, a review of the facts connected with the career of this Society, so far as they can be gathered from the Colonial Records of Connecticut and the publications of the Connecticut Historical Society, will now be presented.

In May, 1732, Thomas Seymour, John Curtiss, John Bissell, and fifty-eight others, said to have been representative men of good standing from various parts of the Colony, presented a petition to the Assembly. The petitioners represented that "for the promoting and carrying on trade and commerce to Great Britain and his Majesty's islands and plantations in America, and to other of his Majesty's dominions; and for the encouraging the Fishery *etc.* . . . as well for the common good as their own private interests," they had agreed to unite themselves together to be a Society and have one common stock. For want of authority to act as societies do, by vote, they labored under great disadvantage. They prayed to be put in a politic capacity as a Society.¹

The Assembly favored the petitioners, and at the same session resolved and granted that the memorialists should be declared and constituted to be for the future one Society in fact and name, by the name of The New London Society United for Trade and Commerce. They and their successors were empowered to admit others; to sue and be sued by their name aforesaid, as other societies were by the law of Connecticut; to elect officers annually; and to prescribe rules for their meetings; their votes at such meetings to be computed as follows: one vote for thirty pounds and upwards to a hundred to be reckoned to him that should put the same into the stock; two votes for the first hundred pounds to him that should put in the same, and then one vote more for every hundred pounds reckoned as aforesaid, till it should amount to a thousand; which orders and rules were to be binding upon the particular members of said Society, and no man should have liberty to take out his stock without leave of

evidence is conclusive that it was in possession of the person who prepared the Scheme for the proposed Bank of 1686. It was reprinted in Boston in 1714. See ante, ill. 6, note.

¹ Colonial Records of Connecticut, vii. 390.

the Society, though he might sell it. Then came provisions for organization.

The generally accepted account of the career of this Company is that which is to be found in Miss Caulkins's History of New London. It is there stated that it was formed in 1730, "being legalized and patronized by the Colonial government," and that it went into immediate operation.

"Loans upon mortgage were obtained from the public treasury, and the capital employed in trade. It had about eighty members scattered over the whole Colony. . . . To facilitate its operations, the New London Society emitted bills of credit or Society notes, to run for twelve years from the day of date, October 25th, 1732, to October 25th, 1744. These bills were hailed by the business part of the community with delight. They went into immediate circulation. But the government was alarmed; wise men declared the whole fabric to be made of paper; and having no solid support it must soon be destroyed. The Governor and Council issued an order denouncing the new money, and an extra session of the Assembly was convened to consider the bold position of the Society. This was in February, 1733. The Legislature dissolved the Association and the mortgages were assumed by the governor and company; and the bills allowed to run until they could be called in and the affairs of the Society settled. . . . According to their own statement a great part of their stock had been consumed by losses at sea and disappointments at home. . . . At a meeting held June 5th, 1735, they unanimously dissolved themselves."¹

This account of the doings of the Society is made up in part from sources not indicated by the author and in part rests obviously upon the legislation of the Colony. It happens that the published Records of the Colony of Connecticut contain so complete a rehearsal of the various transactions of the Society after its incorporation that, when taken in connection with the material to be derived from the publications of the Connecticut Historical Society, they furnish an opportunity to trace its history. It is evident from information to be obtained from the sources mentioned above, that the Society was organized under the Charter granted at the May session in 1732, and, with disregard to the purposes set forth therein, immediately proceeded to

¹ History of New London, by Frances Manwaring Caulkins (edition of 1883), pp. 242, 243.

enter upon the work actually proposed for itself, namely, to furnish a medium of trade to the Colony of Connecticut through the notes or bills of the Society. The so-called stockholders turned out to be, not contributors of funds, but borrowers of notes. In short, the Company was the prototype of the Massachusetts Land Bank of 1740, all of which is fully brought out in the investigations made by the Assembly, to which reference will now be made.

The first step taken by the Society of which we obtain any trace was a vote passed in August, 1732, for printing thirty thousand pounds in bills of credit of the Society. For the purpose of carrying this vote into effect the Committee having the matter in charge notified one Timothy Green, the public printer of the Colony of Connecticut, who was then in Boston, what had been done and requested him to procure paper for the bills and to employ an engraver to cut the plates for the Society. This service he performed and forwarded the sheets in parcels.¹ A facsimile of one of the bills is given in the Connecticut Colonial Records. The face of it, so far as it is of importance in this connection, reads as follows: —

"Three Shillings. This Indented bill of Three Shillings Due to the possessor thereof from the NEW LONDON Society United for Trade and Commerce in Connecticut in NEW-ENGLAND, shall be in Value Equal to Silver at Sixteen Shillings pr. Ounces, or to Bills of Publick Credit of this or the Neighboring Governments, and shall be Accordingly accepted by the Treasurer of said Society, and in all Payments in said Society from time to time.

New-London, Aug. 1732

by Order of Said Society

} Cont."²

The form, it will be observed, was constructed upon that of the Old Tenor Bill. It anticipated the New Tenor Bill in stating a value in silver at which it should pass, but there is in it nothing about the twelve years which the bills, according to Miss Caulkins, were to run. The date also differs from the date given by her.

The process of emission began at once, and it was not long

¹ Collections of the Connecticut Historical Society, iv. 270.

² Colonial Records of Connecticut, vii. 410.

before knowledge of what was being done under the guise of fostering trade and commerce came to the ears of Governor Talcott. On the ninth of February, 1732-33, he issued a precept to the Sheriff of Hartford County, in which he recited that he had been informed that the New London Society for Trade and Commerce had struck and signed bills, on the credit of the Society, to the sum of many thousand pounds, and had sold such their bills to his Majesty's subjects, as a medium of trade, current and equal in value to current money, or bills of public credit of Connecticut or the neighboring governments, and had received for the said bills provisions and other commodities of the country in great quantities. This he alleged to be contrary to the peace of the Crown, and to be a great wrong to the purchasers of the bills, and a great abuse of the powers given to the Society by the Assembly. The Sheriff was therefore instructed to summon the said Society to appear before the General Assembly at Hartford on the fifteenth of February, to show by what authority they had emitted and sold their bills, and to show cause why the Assembly should not order them to refund and pay back to the possessors of their bills the sums for which they had been sold, and further order that they should thereafter cease to strike or emit any bills on their credit, or to be a Society.¹

At the same time, a precept addressed to the Sheriff of New London County was issued, in which he was directed to summon Daniel Coit, the Secretary of the Society, to appear before the Assembly at the same time and place, and to bring with him the records and doings of the Society.²

At the Special Session of the Legislature summoned for the consideration of these matters the Society put in an appearance. They were apparently disposed at first to dispute the jurisdiction of the General Assembly, but this plea they waived and based their defense upon the ground that the bills which they had issued were not of the nature and tenor of bills of the Colony, but were of the character of bills of exchange, which they had a natural right and authority to emit.

The Assembly, having duly considered the plea of the Society, submitted to vote a series of questions the determination of which

¹ Collections of the Connecticut Historical Society, iv. 268, 269.

² Ibid. iv. 268, 270.

would settle the action necessary to be taken under the circumstances. The answers to these questions may be formulated as follows:—

First. It was not lawful for any society of Connecticut, nor for any person or persons, not having authority for that purpose from the government, to emit, on private credit, bills of credit of the tenor of the bills of credit of the Colony.

Second. The bills emitted by the New London Society were of the tenor and nature of the bills of credit of the Colony and were not bills of exchange.

Third. The Society ought in justice to redeem their bills in the hands of possessors.

Fourth. It was expedient for the Assembly to pass a Bill prohibiting the emitting or uttering bills of credit, on any fund or credit within the Colony of Connecticut, which were intended for a general currency in lieu of money.¹

Having determined these points, the Assembly proceeded to enforce the fourth proposition, by passing a Bill of the character therein suggested. They stated in the preamble that they had observed that great disorder and confusion had arisen in the Government by reason of the New London Society United for Trade and Commerce having presumed to strike and emit a certain number of bills of credit on their own Society, whereby many honest people were in danger of being defrauded. The peace of the Government was thereby subverted and the credit of the Colony might sink. Those who should violate the Act then passed were made subject to the penalties imposed upon forgers and counterfeiters of bills, and also to a forfeiture of double the sums mentioned in the bills which should be emitted.

The precept issued by the Governor not only required the Society to show cause why it should not cease to issue notes or bills, but also why it should not cease to be a Society. Up to this point, the Assembly had not taken into consideration the question whether or not the Act under which the Society was organized had been violated. The Clerk of the Society had, however, been summoned to produce the Records, and the Assembly, having first named the Act under which the Society was organized and the

¹ Colonial Records of Connecticut, vii. 421.

records of the doings of the Society to be read, proceeded to the consideration of this question. The result of this examination is stated in the following words:—

"it was observed that a Stock was necessary to be made, by the proportion of which Stock put in by the members thereof, all their votes were to be computed, and that nothing but Mortgages were put in by the members thereof to make this Stock; On which the following question was put, Whether by the said Mortgages any Stock were made, according to the true intent and meaning of the grant? Resolved in the negative."

"Nothing but Mortgages were put in by the members thereof to make this Stock." In these words we have the description of an organization upon the same basis as that effected eight years afterward by the Massachusetts Land Bank,—a Society which emitted bills and loaned them upon mortgage security to borrowers, who became thereby entitled to a voice in the proceedings of the Company proportionate to the extent of the loan. On the above showing the Assembly determined that the New London Society had by its mismanagement forfeited the privileges granted to them, and at once proceeded to repeal the Act containing the grant.¹

Miss Caulkins states that the bills of the Society were hailed by the business part of the community with delight, and she is corroborated in this statement by a correspondent of Governor Talcott, who speaks of "the swift currency of the New London Society bills through so many hands."²

The question arose, How could these bills be withdrawn with the least disturbance to the community? The Records do not state the amount supposed at that time to be in circulation, but Timothy Green, the man who procured the paper and the plates in Boston, said in his letter to Governor Talcott, "How much of the \$0,000[£] are emitted is best known to the Committee, Clerk, and Treasurer of said Society; what is printed, I conclude, is about fifteen thousand pounds."³

¹ Colonial Records of Connecticut, vii. 422.

² Collections of the Connecticut Historical Society, iv. 279.

³ As Public Printer, Green printed the public bills of credit. It is not much of an assumption to say that he must have printed the bills of the New London



The Assembly concluded at the Special Session that under the circumstances it was expedient to emit £30,000 in public bills of credit, a part of which was to be let out for the benefit of the Government, and the remainder to be tendered to such persons as the Assembly should appoint and should give security, for the drawing in of the bills lately emitted by the New London Society.¹ The determination of the exact amount to be set aside for the relief of possessors of these bills and the manner in which the public bills should be applied for the purpose of drawing in the Society bills was not then definitely concluded, though it may perhaps be considered that the limitation to such persons as should give security was meant to apply to those who, as borrowers of the bills of the Society, had assumed certain responsibilities in connection therewith, and sufficiently indicates the intention of the Assembly at the time.

At the May Session in 1733, Thomas Seymour and others presented a petition praying that the New London Society United for Trade and Commerce might be revived. They also asked for a loan of £30,000 from the Colony. For the purpose of determining the attitude of the Assembly towards this petition, two questions were submitted, the First of which was, Whether it was within the authority of the Government of Connecticut to make a Company or Society of Merchants? In response to this it was resolved that, although a Corporation² might make a fraternity for the management of trades, arts, or mysteries, endowed with authority to regulate the management thereof, yet (inasmuch as all Companies of Merchants were made at home by Letters Patent from the King, and the Assembly knew not of one single instance of any government in the plantations doing such a thing) it was, at least, very doubtful whether they had authority to make such a Society, and hazardous therefore for the Government to presume upon it. The Second question that was submitted was, Whether it would be for the peace and health of the Government to create such a Society; and the answer given by the Assembly to that

Society. His conclusion that there had been about Fifteen Thousand Pounds printed may therefore be regarded as authoritative. See Memorial History of Boston, II. 408, note.

¹ Colonial Records of Connecticut, vii. 422.

² The Governor and Company of Connecticut.

was, that a Society of Merchants whose undertakings were vastly beyond their own compass, and who must depend upon the Government for their supplies, must rely on their influence upon the Government to obtain them. Such a Society was not for the peace and health of the Government.¹

Having thus finally disposed of the question whether the Society should be revived and permitted to adjust its own affairs, the Assembly proceeded to deal with the question of protecting the rights of possessors of the Society bills. With this intention an Act was passed appointing a Court of Chancery to hear and determine, according to equity, all controversies about said bills and the doings of said Society and the several officers and members thereof. The preamble opens with a statement that sundry persons have of late mortgaged their lands to Mr. John Curtis, Treasurer of the late New London Society for Trade and Commerce, and to his successor, or to Daniel Coit, with a design to form themselves into a Society for Trade and Commerce under the privilege granted to John Bissell, Thomas Seymour, and others, under the name of the New London Society for Trade and Commerce. Having thus distinctly stated the character of the organization of the Society, the preamble cautiously asserts that these mortgagors then assumed to be a Society for Trade and Commerce, and as such emitted and put in circulation many thousand pounds' worth of their bills. It then alleges that the deception of the mortgages was discovered; that the credit and currency of the bills was lost; and that the possessors of the bills were utterly defrauded. To prevent such mischiefs for the future, a Special Session of the Legislature was held, at which it was declared that the Society had no right to emit bills of credit, and it was, therefore, by Act of Assembly, dissolved.

At the same session, the Assembly also resolved that the Society ought, in equity, to refund and pay back to the possessors of such bills so much in current money or bills of public credit as by said Society bills is mentioned or expressed. At the time when the Assembly originally announced this conclusion, they neglected to fix any penalty for failure to comply with it, and they did not provide any effectual means for enabling possessors of bills to recover

¹ Colonial Records of Connecticut, vii. 442.



from mortgagors. As a result of this, the mortgagors still neglected to pay to possessors the sums due them as aforesaid, or any part of the same. In order to cure this evil it was enacted that the mortgagors were liable to possessors of bills, but, inasmuch as they had in their possession certain property of which no account had been rendered, they were to be permitted to hold one meeting, which, however, was not to last over three days, and were authorized to proceed to settle their accounts as best they could. They had authority given them to appoint a Committee who should call upon the former officers for their accounts; who could sell the property of the mortgagors, pay off possessors of bills, and sue debtors before the Special Court. This Court had authority given it to adjust and settle differences between the various parties interested in these proceedings. In order to give the mortgagors time to convert their property, the right of action on the part of the possessors of bills was postponed until six months after the rising of the Assembly. Special provision was made for discovering what mortgagors were in arrear, and it was made a condition precedent that the possessor of bills should, before bringing his action, lodge his bills in court.¹

It has been already stated that at the Special Session it was determined that it was expedient to aid the mortgagors in their efforts to withdraw the Society bills by lending public bills to those who could give security therefor. The time had now come to give effect to this expression of opinion. £15,000 were lodged in the hands of a Committee to be lent to mortgagors who should first give to the Committee Society bills to the amount of the proposed loan, and who could then have the public bills at the rate of six per cent interest, on furnishing landed security equal to twice the amount of the loan.² It is evident that the security thus demanded was regarded as applying to the principal alone. Separate bonds were given for the interest, and later bonds were given by John Bissell, John Curtiss, Thomas Seymour, Daniel Cuit, and six others to the Colony for large sums, in behalf of sundry others who were mortgagors to answer for the payment

¹ Colonial Records of Connecticut, vii. 450-452.

² *Ibid.* vii. 458. This proceeding may have been the basis for Miss Caulkins's statement that loans upon mortgage were obtained from the public treasury and the capital employed in trade.

of interest. Afterwards, questions arose about the substitution of the bonds of individual mortgagors in place of this joint bond.¹ There was trouble also about obtaining proper releases for satisfied mortgages given to the Governor and Company of the Colony, and resort was had to special legislation on the subject.² It does not appear from the Records that the Committee having charge of the settlement of the affairs of the Company were much bothered by recalcitrant mortgagors. Perhaps the files of the Special Court might disclose some cases of this sort, but it seems probable that the public bills furnished by the Colony for purposes of exchange, taken in connection with the funds derived from the sale of the property of the Society, furnished ample means for the redemption of such bills as were presented to the Committee. How it was possible for a Society without capital to have acquired any property of consequence in so brief a career can only be conjectured; but if the same course was pursued in Connecticut that was afterwards adopted in Massachusetts, this property must have represented ventures in trade accomplished through unsecured notes issued to the Society.³ There were controversies both with reference to the property which remained in the hands of the Committee and to the adjustment of the losses in trade. In October, 1785, the Committee petitioned the Assembly to cause certain proceedings to be postponed, as they were about to settle the affairs speedily and divide the estate.⁴ The question of the responsibility for losses proved more perplexing than had been anticipated, if the Committee were really of opinion that they could speedily divide the estate; and they were obliged, the next year, to ask for the appointment of a Commission to determine these controversies. In response to their request a Commission was appointed with full power.

It is evident that in 1742 there was a default in the payment to the Colony of the interest on some of the mortgages, for Cartiss then petitioned for leave to set over to the Colony real estate, in order to satisfy certain executions for "use-money" due to the

¹ Colonial Records of Connecticut, vii. 500; viii. 68. ² *Ibid.* viii. 234.

³ In addition to "the losses at sea & disappointments at home" which had absorbed a great part of their stock, Miss Caulkins gives references to one or two special ventures.

⁴ Colonial Records of Connecticut, viii. 24.

public treasury of the Colony from the New London Society. This reference to the Society as debtor of the Colony can be but the careless use of language. Curtiss had been the Treasurer of the Society when it was in existence. After its dissolution he had been active in winding up its affairs; and he was one of those who, in behalf of other mortgagors, had given bonds to secure the payment of interest on the loans. These executions for "use-money" were probably based upon some of these bonds. Through the surrender of certain property in New London and by giving a bond for what remained due, Curtiss, with the approval of the Assembly, was released from the obligations that he had assumed.¹ Individuals, however, continued to occupy the time of the Assembly with their petitions as late as 1749.²

The exact amount of the circulation of the bills of the New London Society does not appear. It will be seen from what follows that it required less than £15,000 in the public bills of Connecticut, in their denominational values, to meet the calls made upon the Committee of the Assembly for purposes of exchange. In all probability the amount of the circulation was not far from £10,000. It would seem as if the Committee having in charge the letting out of the £15,000 to the mortgagors of the late New London Society for Trade and Commerce in order to aid in calling in the bills of that Society, must have reached the conclusion, in October, 1738, that the period of their active work was over, for they then reported that they had received £9,507 11s. 8d. in bills of the Society, which bills were then ordered to be burned.³

This was followed, in 1734, by a petition of some of the members of the late Society, praying for a loan of so much of the £15,000 as was not required for the purpose of exchanging the Society bills. The Assembly was disposed to grant this request, but before doing so they required the representatives of the Society to take steps to bring before possessors of bills throughout the entire Colony knowledge that an opportunity was offered them to exchange such bills for the public bills of credit of the Colony. To carry this into operation, it was resolved that the Memorialists should make a proclamation in the several towns in the Colony to

¹ Colonial Records of Connecticut, vii. 491, 492.

² Ibid. ix. 300, 432, 445, 450.

³ Ibid. vii. 478.

the effect that any person having bills of the Society in his possession might, upon bringing them to the Committee, have bills of the Colony in exchange therefor. This proclamation was to be made by affixing a notice containing this information upon the sign posts in such towns. If the Committee should certify that this had been done and that six weeks had been allowed for the bringing in of the bills, then so much of the £15,000 as remained in their possession could be loaned to the mortgagors.¹

The lending of the unexpended portion of this redemption fund to representatives of the Company after these final efforts had been put forth to protect possessors of bills, is a distinct recognition of the compliance of the mortgagors with the law, and it may fairly be assumed that the circulation of the Society bills must practically have ceased when this was permitted. Although, as we have seen, there were matters connected with the Company which occupied the time of the Assembly as late as 1749, this is, to all intents and purposes, the disappearance of the Company as such from the scene.

We have been enabled through direct statements in the Records to ascertain the approximate date and the method of the organization of the Society and have had before us the form of the bill which was issued. Two points alone remain in Miss Caulkins's account which are of enough importance to demand independent examination, and these are the statements that the bills were dated in October and were to run for twelve years from the day of date. The date in the fac-simile given in the Records corresponds with the time when Green said that he executed the order for the Company and had the bills engraved. It is reasonable to suppose that the entire issue bore the same engraved date and was similar in character. This conjecture is reinforced by the conclusion of the Assembly that the bills were of the tenor of the public bills of credit, a statement which could hardly have been made if they were twelve-year notes. Such variations as there are between Miss Caulkins's account and that disclosed by the Records may all be charged to lack of familiarity on her part with business terms and legal forms. This being the case, the mortgages given to the New London Society will naturally suggest themselves as perhaps possessing

¹ Colonial Records of Connecticut, vii. 503.

power to explain the statement that the Society notes were twelve-year notes. These mortgages, it will be remembered, were said by the Assembly to have been made to John Curtiss, Treasurer, to his successor or to Daniel Coit. Two of them at least are to be found in Hartford, and through the kind offices of Professor Franklin B. Dexter, of New Haven, I am able to give their material features. The consideration in each mortgage was defined as "current money." The date of each was 24 October, 1732, and both ran to John Curtiss, Treasurer of the New London Society United for Trade and Commerce. The proviso in each read that the deed was to become null and void upon payment being made "either in silver at sixteen shillings per ounce or in true bills of publick credit of this or the neighboring Governments, or the like sum in bills of the New London Society United for Trade and Commerce upon the credit of said Society, and that on or before the thirtieth day of October which will be in the year of our Lord Christ, one thousand seven hundred and forty four." A person who had never seen one of the Society bills, if endeavoring to work out a description of them based solely upon these mortgages, might, if the rough notes taken from the deeds were confused, be led to describe the bills in terms somewhat similar to those used by Miss Caulkins. Perhaps the New London Registry would furnish examples from which an even closer description might be drawn.

It is more than probable that the materials exist in Connecticut for a more complete history of this interesting experiment. The Company probably had some sort of existence before its organization under the Charter, and traces of the evils that it left in its track may be discovered later than 1749. The authorities for the foregoing account are practically confined to the Colonial Records and the Talcott Papers in the publications of the Connecticut Historical Society. No person can rise from a perusal of these documents without feeling respect for the Colonial Government of Connecticut. The wisdom with which they treated the New London Society, whether we have regard to its peremptory closure or to the aid extended to the members in the performance of the duty imposed upon them to withdraw the circulation, is in marked contrast with the proceedings in Massachusetts under the arbitrary and unjust Act of Parliament.

If the true character of this Society has ever been set forth I have failed to see it. Dr. Douglass refers to it as follows:—

"Connecticut emitted Bills only for the present necessary Charges of Government upon Funds of Taxes, until A. 1738, having granted a Charter for Trade and Commerce to a Society in New London, this Society manufactured some Bills of their own, but their Currency being soon at a Stand; the Government were obliged in Justice to the Possessors, to emit 50,000*l.* upon *Loans* to enable those concerned in the Society to pay off their Society Bills in Colony Bills; their Charter was vacated, and a wholesome Law enacted, *That for any single Person, or Society of Persons to emit and pass Bills for Commerce or in imitation of Colony Bills, Penalty should be as in Case of Forgery, or of counterfeiting Colony Bills.*"¹

Dr. J. Hammond Trumbull, in his First Essays at Banking, and the First Paper Money in New England, overlapped this period in his notes but did not cover it in the text of his paper. He refers to the Society briefly in a note.²

A careful study of the public bills of credit of the Colony of Connecticut was made by Dr. Henry Bronson and communicated to the New Haven Colony Historical Society.³ The author treated of the Colonial currency exclusively, and although his subject brought him in touch with the transactions of the New London Society, he made no effort to analyze its affairs in detail. Brief as his contact was with this part of his subject, it enabled him to detect some of the errors in the account given by Miss Caulkins.

If it shall prove that I am mistaken in thinking that the points of resemblance between the New London Society and the Massachusetts Land Bank have not before been described, this account will lose the feature of novelty, but it may perhaps still have some value as an independent presentation of the subject.

¹ A Discourse Concerning the Currencies of the British Plantations in America. Especially with Regard to their Paper Money: More Particularly, In Relation to the Province of the Massachusetts Bay, in New England. Boston. S. Kneeland & T. Green, 1740, p. 18.

² Proceedings of the American Antiquarian Society for October, 1854, New Series, iii. 302, Note D.

³ Historical Account of the Connecticut Currency, by Henry Bronson, M. D., in Papers of the New Haven Colony Historical Society, Vol. I. See Notes, pp. 42, 44, of Dr. Bronson's monograph.

The following letter from our associate Mr. ABNER C. GOODELL, Jr., was read by Mr. Davis, to whom it is addressed:—

SALEM, 18 January, 1896.

MY DEAR SIR,—Being forced, most unwillingly, to be absent from the meeting of The Colonial Society to-morrow, I am once more compelled to beg of you the favor to represent me by reading the accompanying paper (or the translation of a part of it, rather), which I am sure you will agree with me is worthy to be printed in our Publications. It is an exact copy of the record of a Commission granted by King George the First in 1726-27 to Edmund Gibson, Lord Bishop of London, authorizing him to exercise certain episcopal functions in America either in person, or by a commissary or commissaries to be appointed by him.

This document,¹ which had long eluded the researches of Mr. Sainsbury, I had the gratification, recently, as I have already informed you, to receive from Miss Walford, who found it under the direction of Miss Connolly, my former chief clerk on the Province Laws. It does not strictly belong to the group of Commissions, etc., relating to the civil administration of the Province which I have contributed to our Society, but since it is equally valuable as bearing upon the attempts made by the Home Government, during the Provincial period, to establish the Episcopal system in Massachusetts, I ask you to offer it for the consideration of the Committee of Publication. It is especially enjoined upon the notice of Governor Belcher in the forty-seventh article of his Instructions. I have not been able to find it in print anywhere, but should it prove to exist in any publication I should, of course, withdraw it. A most interesting account of the exercise of the Bishop's authority under this Commission, in the appointment of Roger Price as the first Commissary, he being then Rector of King's Chapel, may be seen in the first volume of the Annals of the Chapel, pp. 171, 172, 388, and 404,—a work in which our Society has a special interest, since

¹ Patent Roll 18 George I., part 4, no. 3, dura. The reference to this Commission in the New England Historical and Genealogical Register for October, 1872, xxvi. 402, is to the incomplete draught in the Journals of the Lords of Trade. The enrolment of the Patent Mr. Sainsbury, apparently, failed to discover. A second Commission to Gibbs, 1 George II. (20 April, 1726), is printed in Documents Relative to the Colonial History of the State of New York, v. 340.

it was completed under the editorship of our associate, Mr. Edes, in a second volume of nearly seven hundred pages,—a monument of comprehensive and painstaking research.

There is, perhaps, no better illustration of the readiness of the Home Government to usurp authority over the Colonies than the practice which obtained in England and was sanctioned by Episcopilians here upon the unfounded assumption that, by virtue of his office, the Bishop of London had ecclesiastical jurisdiction over the Colonies as *in partibus infidelium*. In 1725 the legality of this practice was questioned by Bishop Gibson, who declined to follow it without further and explicit direction from the Privy Council, and upon his petition it was determined by that body that the practice was unauthorized, and that the jurisdiction claimed could only be conferred by letters patent. Accordingly, the Commission before us (which is a Patent under the privy seal) was issued. It appears not to have been renewed after the death of Gibson, which happened in 1748. It is supposeable that there were valid objections to the legality of a Patent authorizing Episcopal interference in the ecclesiastical affairs of this Province; probably an insuperable obstacle was deduced from that clause of the Province Charter which guarantees liberty of conscience. But of this I may have something to say at some future meeting of our Society. I may however add, in passing, that discretion as to the act or degree of interference could not have been confided to a more careful and judicious prelate than he who then held the See of London. Besides being a profound theologian, and thoroughly versed in ecclesiastical history and the canon law, he had a judicial mind not easily moved by partisan appeals of ill-advised zealots. To-day he is probably best remembered as the accomplished editor of Camden's Britannia.

The Patent is written in abbreviated Latin,² and with the copy I submit a translation of so much of it as is sufficient to give a clear idea of its purport.

The original copy transmitted, which Belcher was ordered to have registered in the public records of the Province, was undoubtedly consumed in the great fire of 1747, of which devastation Mr. Noble

² The full Latin text of the Patent will be found in Volume II. of this Society's Publications, which contains the Commissions and Instructions of the Royal Governors of the Province of the Massachusetts Bay.



informs me he has found a memorandum of some interesting particulars in a paper or record in his office.¹

Although the Weekly News Letter of 4-11 May, 1727, contained the announcement that this Commission would soon pass the seals, it would seem that the delegation of authority to Commissary Price was not sent by the Bishop until 18 July, 1730. Belcher's Instructions, to which I have referred, were prepared a little less than four months before this date.

Sincerely yours,

A. C. GOODELL, Jr.

ANDREW McFARLAND DAVIS, Esq.

[Translation.]

The King etc., to the reverend father in Christ, EDMUND, by the grace of God, Bishop of LONDON, greeting: WHEREAS the colonies, plantations, and all our other possessions in America have not yet been divided or formed into dioceses, nor annexed to any diocese within our Kingdom of Great Britain, by reason of which the jurisdiction in ecclesiastical causes arising in those [places] or in any one of them, pertains to us, alone, as the supreme head on earth, of the Church; and WHEREAS it has seemed necessary to us that henceforth the spiritual and ecclesiastical jurisdiction in those regions in the inferior causes set forth in these presents be by our Royal authority instituted and exercised in accordance with the laws and canons of the English Church lawfully accepted and sanctioned in England by which the sincere worship of God and the pure profession of the Christian religion may be better promoted, Know THOU that we, fully confiding in your sincere piety and learning, and in the uprightness of your character, and in your prudent circumspection and industry in the administration of affairs, by our special grace and of our certain knowledge and mere motion have given and granted, and by these presents do give and grant, to you, the aforesaid Bishop of London, full power and authority to exercise, in persona or through your chosen commissary, or commissaries substituted and nominated by you, spiritual and ecclesiastical jurisdiction in the respective colonies, plantations and all our other possessions in America, according to the laws and canons of the English Church as lawfully accepted and sanctioned in England in the special causes and inferior matters mentioned and specified in these presents; and as a declaration of our Royal will as to what are the special causes and matters in which we desire that the aforesaid jurisdiction be exercised by virtue of this our commission, we

¹ See Mr. Noble's communication at the November Meeting, ante, pp. 5-26.

have further given and granted, and by these presents do give and grant, unto you, the aforesaid Bishop of London, full power and authority, by yourself (in person) or through your chosen commissary, or commissaries substituted and nominated by you, of visiting all the Churches in the colonies, plantations and all our other aforesaid possessions in America in which divine service shall have been celebrated according to the rites and liturgy of the English Church, and of summoning all rectors, curates, ministers, and incumbents, (or persons called by any other name whatsoever) of the aforesaid churches, and all presbyters and deacons ordained in the holy orders of the English Church, or any one or more of them before you, or [your] commissary or commissaries aforesaid, and, by witnesses sworn in due form of law by you or the commissary or commissaries aforesaid, and in other lawful ways and modes by which this can be done better and more efficaciously according to law, to inquire concerning the behavior of these, and concerning the behavior of parish clerks and to investigate concerning their experience, care and diligence in all duties pertaining to the position of parish clerk, according to the laws and canons of the English Church; and also of administering any lawful oaths whatsoever usual in ecclesiastical courts, and of correcting and punishing the aforesaid Rectors, Curates, Ministers, Incumbents, Presbyters and Deacons ordained in the holy orders of the English Church (and parish clerks according to their fault) whether by removal, deprivation, suspension, excommunication or any other sort of ecclesiastical censure whatsoever, or of due correction according to the ecclesiastical canons and laws aforesaid. And further we have given and granted, and by these presents do give and grant, to you, the aforesaid Bishop of London, full power and authority, through yourself or your commissary, or your chosen commissaries, of inquiring concerning the condition and repair of parish churches, and houses, from any rector, minister, incumbent, or person called by any other name, relating or pertaining thereto, in the colonies, plantations and all our other aforesaid possessions in America, and concerning the provision by all these whomsoever for the decent and regular celebration of divine service and the administering of the Eucharist in the churches aforesaid according to the required and necessary requirement of the law; and of compelling and coercing these persons, etc.

Mr. JOHN NOBLE presented, for publication, a literal copy of a fragment, in Secretary Rawson's handwriting, of the original Journal of the Massachusetts House of Deputies, for the May Session, and a part of the October Session, of

1649. The discovery of this document¹ was announced by Mr. Noble to the Society at its Stated Meeting in February, 1896.² The text of the paper is as follows:—

FRAGMENT OF THE ORIGINAL JOURNAL OF THE MASSACHUSETTS HOUSE OF DEPUTIES FOR THE MAY SESSION AND A PART OF THE OCTOBER SESSION OF 1649.

[The manuscript, with the exception of a few entries noted as they occur, is in the handwriting of Edward Rawson. It is comprised in five separate papers, which, arranged according to the contents, have the following order: three sheets (four pages each); and two leaves (two pages each). For convenience of reference the document is here paged, in broad-faced figures, 1 to 16 in brackets. Brackets alone indicate a doubtful rendering. Brackets with stars indicate what is cancelled in the original. Where the original is wholly illegible the space is left blank between brackets. Upright parallel lines indicate interlineation. A caret indicates an apparent omission in the original.]

[1] [Top of the leaf torn off.]

[See Massachusetts Colony Records, III. 246; II. 246.]

[] Esq':
[] ham Esq':
R[ich'd: Saltonstall Esq':	
Wm Pinchon	
Jo: Winthrop	
Increase Nowell	
Simon Bradstreet	
Tho. Symt	
Wm Hibbines	
Sam: Symonds	
Robt. Bridges	
Edward Gibbons Esq' majo' gen'l:	
Rich'd: Russell gent.	Treasurer:
Tho. Dudley Esq'	
Simon Bradstreet gent.	Commission's
Jo: Endicott Esq' Gov'r n'	
Rich. Bellingham Esq':	Ress'ves.

Secretary:
gen' Assistants:

absents aft' Conference
Speaker — 1'
Capt Hawthorn — 6
M' Bartholomew X 6
Cap' Keayne 6
Left Walkr 6

if all these pay:
not y' Clarke
not to pay his
all Remitted

¹ Suffolk Court Files, div. 96,500.

² Publications, iii. 207.

² The bracketed references in broad-faced type throughout this document are to the printed volumes of the Massachusetts Colony Records.



2^d. May 1649:

y^r sev'l Retournes] for Dep[er]t was Read & Accepted y^r
names are }
majo^r Danill Dennison } Speaker

Salem :	Capt W ^m . Hawthorne.	Concord : Capt Sim ^o Willard.
	Hen. Bartholmew.	Dedham. Antho : fisher.
Charlesto :	majo ^r Sedjuke.	Sillesbury. Left Robt Pike.
	m ^r Willowby.	Hampton : W ^m Eastowe.
Dorches ^t	m ^r glouer.	Rouley. Humph : Reynor
	Tho. Jones.	Sudbury. Edmond goodesow
Boston.	Capt. Keayne	[Dover]
	James Penn	Braintry Capt W ^m Ting
Roxbury.	Capt Prichard.	Samuell Bass
	W ^m Parkes :	Glocester Obadiah Bruen.
		[[Dover]]
Wat ^t Toone.	Rich. Broune	Woobourne : Left Johnson.
	Ephraim Child	Wennam. W ^m fiske.
Linn	Tho Laiton	Have'll : Robt Clements.
Cambrdg	Capt Gooking m ^r Jackson.	Redding Rich. Walker
Ipwich.	majo ^r Denison.	Springfeld : John Johnson S'veye's
	Robt. Paine	

Newbery	Edw Rawson.	187
Weimouth	Left. W ^m Torrey.	72
Hingham :	Nico. Jacob :	22
	Jo. Beale :	22
		12
		22
		22
		117

majo^r Daniell : Denison. was chosen Sp[ecial] for this session :

James Penn : & W^m Parkes was chosen Husbands [house of Deputies for this] session [according to order] [III. 147.]

[2]

[Top of the leaf torn off.]

Rec'd to be
Allowed. 2. 25
X
Capt Keynes
Supt vs.
Entered & Receaved a Petition. of John Gy[dney of Salem]
in Reference to a Composibon for his impost of wyne ["m^r"
Auditor gen'll^e] James Penn & W^m Parkes are appointed a
Committee & have power to Compound wth him or any other
Vintner & to turne y^r impost to an annall Rent for flower

yeares as they shall Agree & thinke meete. Provided such come in at or before the y^e end of this courte [III. 147.]

^{and by him} Edney Bayly Peticon: wydow: for explanation of the Courts Answer to his former^A was accepted of & granted also shoulde have: ye Courts [*minde*] Resolūcion & explanation w^tout a[*ny*] fee: [acc]ording to his desire] [III. 148; II. 298.]

M^r Emmanuel Downing peticon for ye Abating of his fine of 50^d for his Absence ye last Courte was accepted of to be Answered w^tout fee. And [*was Answered*] his fine was Remitted according to his desire [III. 148.]

Itt was voted that m^r Speaker in the name of the howse of Depu^ts should Rend^r m^r Cobbett the thankes of the howse for his worthy [*thankes*] paynes in his [*lubo*] se'mon wch at ye desire of this howse he preached on ye day: of Election & that [it] is their desire he would printe it (here or elsewhere) [III. 148.]

Itt is ordered: that ye Agreement made wth W^m Phillips: Hugh gallison: Robt Long: W^m Hudaon: & Robt Turner for ye chage of yeir Impost to an annuall Rent shall be entered amongst the Records of the Courte. ye Acts of the Committee beinge Approved of & they dischargedg. wth 3 Additions: enquier: [III. 148; II. 277.]

Itt is ordered y^e y^e bond of majo^r Robt Sedjuk Richard Russell francis Norton & David Yale: for the payment of the Annuall Rent wch they Agreed wth the last gennerall Courte to pay as therein more Amply Appearcs should be Recorded amongst the Records of this Courte. ye acts of the Committee therein is Approved of & they dischargedg: [III. 148; II. 278.]

A writing from Springfield w^t Reference to y^e Impost challenged from Conecticut of vs: &c: wch is committed to y^e consideration of Capt Hawthorn Capt Ting Capt Keayne & some magistr^s. w^t is to be done thereabout respecting the Artickles of Confederation: [III. 154. 151; II. 248-271.]

Capt Keayne Capt Ting & Capt Hawthorne are Appointed a Committee to Joyne w^t some of our honord majest^s [*to make Retourne*] to consider about some magazine of Corse &c: [III. 152.]

y^e no busines but necessary businesses to be accepted of to be treated on y^e session y^e so y^e Court may be Adjournded

^A So in the original.

[] touch the
h[er]o] by ordered
] bodyes of
h]esith [as p]ositions chi
ex]ercice or put forth any
rules of arte nor exercise any force vio
[lence or ex]actys vpon or towards ye bodyes of any whether
yonge [or old] (no not in the most difficult and desperate
cases) w^tout the advice and consent of such as are skillfull
in the same art if such may be had; or at least of the wryest
and gravest then p'sent, and consent of the patient or patients
if they be menti compotes much lesse contrary to [*the*]
[such] advice and consent vpon paine of Death or such other
punishments as the nature of the facts may Deserve: wch
lawe is not Intended to discourage any from a lawfull vse of
their skill but rather to encourage and direct them in the right
vse [*of*] the [*i*]: [off] [*skill*] and to Inhibite and Re
strayne the p'nsumptuous arrogancie of [] as thorough
p'sidence of [their] owne skill or any other si[sister] Respecta,
dare be hould to Attempt to exercise any viole[ce] vpon or
towards the bodyes of young or old to the p'yad[ice] or hazard
of the life or limes of men women or children [III. 152; II. 278.]

At y^e Request of m^r maverick a hearing granted him
on: 9th day of 4th may: [III. 152.]

4: May 1648.

A petition from Newhey Reed about Plum Island: [III.
152; II. 283.]

Recd & Recd^r
by E D M

Recd & Recd
about vnde
taken for y^e pay
of it to the H C

Marblehead peticon: by W^r Walton. Moses Mav'lock
&c. for a Townshipp voted & sent vp. y^e power & priviledg
of a Townshipp granted by both [III. 152; II. 282.]

on y^e Peticon: of Richard Walderon for acceptance of his
excuse for his Absence. A [III. 152.]

voted [y^e] peage should still Kersayne payable fr^r man
to man according to the laws in force: [III. 152.]

In Answer to y^e peticon of Edney Bayly & Eschiel North
isne his his^r p'sent husband: Itt is ordered y^e y^e 40^d given to
y^e child or children of Edney Bayly by w^m. husband remains
in y^e hands of Eschiel Northisne, husband to y^e said Edney,

^A Repeated in the original.

order about
marks : not
having
voted

by both:

Refd. &
Read by James
Penn D^r
Sent up.

Refd. & Read.
Read
[Searched]
engrossed for it
and sent vp.

[4 Blank]

[5]

[] petition of y^e Inhabitants of Sudbury
[] of their bounds westwards. their Request
[] lies westward to their line so as it prejuiceth [not]
[] Brouse in his 200 ac^s. granted to him. [III. 153; II. 272.]
[] petition of Nathaniell Boulter & Richard Swayne
[] meat of his fine for non Appearance This Request
[] Respect ^ [III. 159; II. 272.]
[] Answ to a Petition of Solomon franco. 6^t p week
Allowed him for 10 weeks so as befor y^e time he gett his
passage &c. [III. 159; II. 272.]

¹ The name Waldorne would seem to be an error in the original record for Walker. The name of Richard Walker appears in the lists on pp. 117, 181; Waldorne or Waldron appears as a Deputy in neither. See also Secretary Newell's record, Massachusetts Colony Records, ii. 265.

till Joseph Bayly sonne of Rich Bayly. deceased. shall Attayne the age of twenty and one yeeres and then so much thereof to be paid to y^e said Joseph Bayly ["sonne"] as y^e will of y^e sd Done^r Willm Halstead doth Appoint & y^e said [Joes]phs porcion out of his fath^m estate shall be 41^t wch is two third pts of the sd [estate] wch some of 41^t shall also remaine in y^e hands of y^e sd Ezekiel Northirne till y^e sd [Joseph] shall attayne y^e age of 14 yeeres. Provided the sd Ezek. North. give sufficient security to ye next [court] to be holden at Ipswich for y^e well educating of y^e sd Joseph till he att: to 21 [y^e &] for [ye p^r] lyings of ye sd legacy & porcion as formerly is expst [III. 158; II. 268.]

Petition of Hull men: for encouraging m^r mathewes to preach: voted. ye magis^t. Answ^r desired first. [Ans'd: 3^d day next at one of y^e clocke all ptyes sumoned accordingly therabout] [III. 153; II. 272.]

Rich. waldeⁿs¹ petition for his excuse for his Absence Recd. & voted w^tout fee [his] excuse accepted of: [III. 153.]

A petition of Jonathan wade for y^e disburram^t of sixty pounds by Tho wade of Northampton for his vse in[tol] y^e stocke of the Country for the furtherance of the plantacon for whch he desires land in Plum [Iland de]njoyed by both [III. 154; II. 272.]

A pe[ti]on of w^m] Tilley for Abatement of 4^t fine Refered to y^e Consideracion of the magis^t first [by w^r?] def[] & off[ring pts] refered to y^e magis^t. [III. 158; II. 272.]

Entered &
notified for
10^t by The
May.

10^t may. 1649.

Salisbury new Towne petition entered. [III. 160.]

Voted &
sent vp.

Voted &
sent vp.

Voted &
sent vp.

by both.

Entered & engd.
to be paid for
within a month
at 10^t corrs
or better by
W^m Blawer.

Voted.

Voted &
sent vp.

Voted [w^m
bld^r] &
sent vp.

Voted

A new lawe about [women's] Dowrie [III. 154, 160; II. 261.]
a nother lawe. for p'vention of vnnecessary expence of
time & chardge for want of dew Attendance on y^e Courts of
Justice at y^e beginninge thereof.
another lawe: about magis^t: giving Counsell: [III. 160:
II. 279.]

In Ans^r to: a petition of Jonathan Wade for disburam^t of
50^t into the Comon Stocke: 400 ac^s of land graunted him
where he [cann] find it so as it be not [judged] p'industiall by
this Courte to any Towne or plantaⁿ already made or to be
made [III. 160; II. 272.]

A petition of Thomas moulton for Abatement of his fine
of 5^t. [III. 160; II. 274.]

on y^e magis^t: Retourne y^e m^r mathewes be not permitted to
preach either publickely or privately vntill: he hath given
satisfaction to y^e Elders y^e heard the errors chardged & pved
against him. or to the greater number of them. & y^e he Re-
tourne not to Hull. accroding to the Judge^r of ou^r bretheren
y^e depu^t. cannot Assent to y^e magis^t herein: [III. 153, 158,
160; II. 276.]

In Ans^r to y^e petiⁿon[os]f] Elizabeth Cole wyddowe. vide
[Ans^r] [III. 155; II. 272.]

In Answ^r to a Case ppondred for y^e exposition of a doubt-
full clause in one of the printed orders for Abeating on y^e
lords Day

y^e Quest. whether where y^e lawe saith that after dew means
of conviction vsed. he shall forfeite for ou^r offence [5^t] be
to be understood legall conviction or otherwise voted y^e it's
to be understood legall conviction. [III. 160.]

In Ans^r to y^e petition of y^e Town of Newbery for
[] millitary [off]icers: The petitioners
not hav[ing] observed order in the] Election of
their officers the []
but the said petition []
according to an order of []
] shall [choose to y^e] County [] [III. 159; II. 274.]

¹ This appears to have been first written 20 and changed to 10.

[6]
[Voted &
not vp]

¹ In Answer to the pet. of m^r Raw [] ordered that theirre accounts be acc[ounted] [III. 161; II. 272.]

[Blank space in the original.]

January 29th

¹ forasmuch as severall Inconveniencies may accrue to the Commⁿ.wealth by the Lift^{ing} of the presse this court doth order that ^

January 29th

In Ans^r to y^r petiⁿon of John Johnson s^rveio^r g^rd for Recompence for his time expended in his office for 4 yeeres past voted he shall have 5^s [III. 160; II. 271.]

Agreed with

At y^r Request of y^r Towne of Braintree Capt. Ting Sam^l Bass^e & Stephen Kingsly are Appointed to end smale cawses there this yeare. [III. 161; II. 271.]

and stand
Committee

¹ Whereas many peons escape the punishm^t that should be inflicted vppon them according to law Its therefore ordred by this Court & the Authorith thereof that henceforth all Constables &c. ^ [III. 167, 170; II. 271.]

January 29th

Voted wth y^r Depu^b y^r in case y^r youngest child of our late honored Gov^rn^r dye before he Attayne the age of 21 yeeres y^r 200^s given [shou]ld be divided into 3 pts one to fall to y^r widdowe y^r other to Deane & Samuell winthrop: his [next] youngest sonnes who nev^r had any porson nor is like to have. [III. 161; II. 274.]¹

¹ In Answer to the pet. of Elizabeth fayerfeild for Lib^m to depart wth her husband [it] was ord^r that the [] should be granted gyvided that he should be vnder [] former censure if ever he [return]es a[gain]e [III. 161; II. 272.]

[V]

[] the Pet. of Joshua fisher of Dedham [] the Paym^t of fifty shillings p butt [] of wine according to an order &c [] the Pet. should repaire to o^r co[mmittee] [] that end to make his Composition. [III. 169; II. 273.]

¹ In Answer to the Pet. of Charles Saunders for men to be appoyted to apprise the tacklings & other goods in & of his ship that was blowne vpp It was ord[er]ed that matthew Chaffey & Arthur Gill both of [boston] shal[l] be the men appoyted for the service aforesaid [III. 161; II. 274.]

¹ These six entries and the entries in the margin against them, except the first, are in the handwriting of William Torrey. ² C. post, p. 122.

Entered, engd
for Mr. Dr.
Voted & Read
y^r Agreed.

by both.

by both

20^s engd for

In Ans^r: to y^r petition of Tho. moulton. for Abatenc^t of his fine Referred to y^r next qrt^r Court: for an Answer. [III. 160; II. 274.]

¹ a bill about strayes p[re]sented was voted neg[ative]ly
In Ans^r to the petiⁿon of m^r Tilly he is only [to pay] wth y^r 10^s: for entry of y^r petition 40^s: [III. 164; II. 272.]

In Ans^r to y^r petiⁿon of Rich. Bellingham Esq^r & Rich Dumer about m^r Nelsons will Referd to m^r Saltonstall and m^r Simonds [III. 164; II. 272.]

¹ In Answer to the Petition^o of the Inhabitants of ["Salsbury"] y^r Newtowne of Salsbury for freedō. from the may[n]tenance of the ministery in the old towne &c. It wa[s] ord[er]ed that the Petition^o should be freed from Rates to the mayntenance at the old towne, vnlss the old towne shall com[tri]bute pportionable to their estates to y^r mayntenance of a preacher [to them] when & whiles they haue one. [III. 160.]

In [Ans^r] to the letter of John Smith genn^r Assist of y^r [col]ony & T[owne] of Warwick^r [] being no accusacion ag^r y^r Inhabitants of warwick^r hence nothing to] chardge vpon them at p[re]sent [& wth any] [] shall Referd to the Comis[ion^r] [III. 162; II. 272.]

[8]

Voted

[] m[ay] 1640
The Depu^b cannot Assent y^r []
James O[linuer] for y^r Salut[ing]
the Courte should take furth[er]

Capt Hawthorne [m^r] majo^r Dea []
m^r Simonds and Heary Short []
petition.

Voted

In Ans^r. to y^r petiⁿon of Solomon []
m^r willowby Capt Gookin and m^r Pay []
honored magis^r thereabouts. [III. 169; II. 272.]

Voted &
not vp

That Plum Iland is granted to Ipswich Rouley and new-
bery, Ipswich to have ["Right to"] two ["third"] pts of y^r
Iland. Newbery the ["like Right to other"] [to have] two
["third"] pts and Rouley like ["Right"] to [have] one pts
of the Iland. [III. 169; II. 272.]

¹ These two paragraphs and one marginal entry are in Torrey's hand.

Voted &
sent vp.Voted &
sent vp.Voted &
sent vp.Voted &
sent vp.

In Answer to a Request of John Petes Pagall¹ being pob-
lkt aboard the shipp they Came in might be marryed notwithstanding
the law of publication: wch y^t Dep^t Refer to
the magis^t consent hereto. [III. 276.]

The committee Retourne about w^t gerish his petition Approved
de. [III. 168; II. 275.]

A bill about Appeals: Itt is ordered by this Courte y^t all Appeals lawfully obtained are to be accompted in y^t nature
of a writt of error and therepon all further Proceedings to
Judg^t and execution shall be suspended and the p^tle Appealing
shall breifly in writing vnder his or his Attorneys hand
give [in] to some one of the Judges from whom he did
Appeale the grounds and Reasons of his Appeals sixe dayes
before the beginning of that Courte to wch he did Appeals.
[III. 267; II. 279.]

The dep^t, have voted y^t 200^t shall be paid out of the best
of y^t pay of y^t Country levy to y^t Su'veyo^t gen^d for the
purchasing of gunnpoder for the Countrys store but in
case that should fall sherte y^t warrants Issew out from this
Courte to Rayse 200^t for that end & the Su'veyo^t gen^d &
James Penn are Instruced to treat w^t some of y^t merchants
for the purring of so much powder as amounteth to 300^t.
[III. 168; II. 222.]

[It is] Ordered by this Courte and y^t Authority thereof
y^t y^t Selectmen [of ev'y Towne] w^t in this Jurisdiction shall
before y^t 24^t of June wch [shall be] in y^t year 1660 provide
for ev'y 50 soldiars in each Towne [a bar]rell of good powder
150^t of musket bulletts & C of match and [cert]ify vnder their
hands before that time to the Su'veyo^t gen^d y^t they are so
vided under the penality of 5^t for the want of [any] br^t of
powder 150^t of bulletts & C of match as before And y^t said
selectmen are hereby A[uthoriz]ed by this Courte to Assess
y^t Inhab[itants] for mak[ing] this priccon wch shall Remayne
[as a Towne ev^t and besides] other priccons:
[III. 168; II. 222.]

[per mat]hewes Admendition []

[D]

[Top of the last torn off.]

ass^t joints for the [III. 168; II. 276.]
] the [Dep^t] w^t a

] I. 1669^t

* Probably May 21, 1669.

¹ Spelling?Courte to be
powder
Voted:
sent vp.Voted &
sent vp.Voted &
sent vp.Voted &
sent vp.Voted &
sent vp.Voted
Jo Johnson
Ro Keayne
M. Penn

Voted & sent vp.

Voted

Capt Keayne & Capt Ting Appointed a Comittie to joyne
wth some of our honnored magis^t as a close Comittie to
Consider w^t y^t Surveyo^t gen^d what y^t store of powder is &
what neede of Repaire. making Report to this Courte what is
meet to be done in the Renewinge of y^t Countrys store.
[III. 168; II. 266.]

Order of y^t q^t Courts y^t maj^t Sedjake & maj^t Gibbons
should each have a barrel of powder d^t them by y^t Su'veyo^t
gen^d: y^t if y^t gen^d Courts did not allowe thereof they should
Repay it to the Su'veyo^t gen^d: voted y^t y^t gen^d Courts Allowes
it not & y^t y. should Repay it [III. 168; II. 270.]

In Ans^t to y^t petition of mistike side about A name of y^t's
Touze. &c. [III. 168; II. 274.]

A Conference yeildid to: in w^t mathewes busines
w^t Hills gratuity of 10^t: [III. 168; II. 273.]

Capt. Ting Capt Keayne & Capt Bridges a Comittie to
enquire after y^t Renewinge of the Countrys stock of powder.
[III. 168; II. 266.]

In Ans^t to y^t ^

In Ans^t to y^t motion of y^t military officers at Boston for
an allowance of 1 barrel and a half of powder d^t to them
& spent by them at y^t funerall of our hono^red late gen^d w^t.
granted them. [III. 168; II. 270.]

That henceforth it shall not be in y^t liberty of any Touze
or peon to pay peage to the Country Rate from time to time
[III. 167; II. 275.]

for disburse^t: for y^t Repairings of y^t prisca Jo. Johnson
& James Penn [III. 168; II. 266.]

on a 3^t motion [of w^t Carr] y^t power is conferred to y^t
next Courts at Salisbury to determine wch is best for y^t farr^t
to be in his hands wholy or to both as Reasons do Appear
for y^t Ease of y^t Country. [III. 168, 267; II. 266, 276.]

Itemasmuch as the lawe of god. Exod 20. 18. allowes no
man to touch the life or limme of any peon except in a judi-
ciall way. Be it hereby ordered to and decreed y^t no peon
or peons w^tow^t y^t are Imployed about the bodyes of men
women [*and*] [or] children for p'servadon of life or health
(as Phisitians chirurgians midwives or others shall p'mise to
exercise or putt forth any act contrary to the knowne to the
contrary to the knowne¹ Rules of Arts nor exercise any force

¹ So in the original.

the helpe of
young or old to
the p[ro]fession or
honest of the
life or business of
men women or
children
By law Aprill.

violence or cruelty, vpon or towards y^e bodyes of any whether young or old no not in the most difficult and desperate cases) wthout the aduise and consent of such as are skilfull in the same art if such may be had or at least of y^e wisest and gravest then p[re]sent and consent of the patient or patients if they be mentis compotes much lesse contrary to such aduise and consent vpon such punishment as the nature of the fact may deserve [] lawe is not intended [to discour]age any from a lawfull use of their skill but [rather] to enco[u]rage and dir[ect] them in the right use thereof and to lab[or] and restraine the presumptuous [such as] thorough p[re]dence [] [III. 168; II. 278.]

[10]

[Top of the leaf torn off.]

Wher[
[
[
[found
bills si [
incurr[
[therefore ordered [
Troope [to discount yearly out of his Country R[
] Towne where he lives the said five shillings prived be ydu [] vnder the hand of the cheife comander of the Troope that he is furnished acco[rding] to order wth horses and armes and the Treasurer shall discount of y^e said Constables Rates w[hi]ch he shall pay accordinge to this order: [III. 168; II. 280.]

~~Agreement~~

just to him.

~~Records &
titles to be
compared~~

5 may 1649. The depe^r in Remembrance of a former grant or p[er]mis y^e m^r mavericks should have a day Assigned him by this courte to be heard in what he shall p[ro]pose according to his former petition: desire y^e wensday next at one of the clockes in the Afternoone shall be the time Assigned by this Courte for y^e purpose Aforesaid [III. 168, 169.]

In Ans^r to y^e petition of The Gayner It is ordered y^e Capt Kenyons & Capt Ting are appointed a Committee to examine the Records transcribed according to what hath bin transacted that they be truly transcribed: paing the officer for it & deli[ver]d to him & y^e such goods as were not Inventoryed [III. 168; II. 278.]

The Courte is Adjourned till 2^d day next at one of the clockes.

14 may 1649:

The Courte mett at y^e Time Appointed: being one of y^e clockes.

The lawe for stopping the West Indye shippes at y^e Castle on sufficient testimony of y^e Afflicting hand of god Ceasings & those pts being in good health (is repealed). [III. 168; II. 280.]

Quest about the lords day. voted if y^e magis^t concess y^e lawe to need Amendm^t that they would [*first*] impte first to them, wherein they shall not be wanting willingly to comply. In what they shall please to p[ro]pound as Just and Reasonable to be done therin. [III. 168.]

Serv^y gear^d Allowed 10^d for his paines d^c. [III. 168; II. 271.]

Voted a
mil^try
watch:
a mil^try watch: y^e major^d gear^d to Receive his commission & oath & be ordered to Appointe a watch in boston & charles Towne as is desired [III. 168; II. 278.]

[11]

[Top of the leaf torn off.]

[
[
[
] It was voted
] Id only extend to
][**] 17 8[orders] in y^e
for Appeals d^c.

[At the re]quest of James Penn y^e wher[ens h]is name is inserted in an order [*as a licenser*] to take notice of such horses or mares ^ should be shipped out of this Country: Edward Bendall is Appointed in his Roome d^c. [III. 168, 169; II. 280.]

The Towne of Newbery on y^e payinge of five pounds to the S'veyo^d gear^d for y^e barrel of powder whch was dd. to m^r Rawson & the Towne beings Allowed the Rest. for what was dd. to such soldiery as went in y^e service about y^e Indians Designes at or about that time & what was wasted: [III. 168; II. 270.]

Sadbury petition [about y^e r meadowes] entered amongst y^e Records of y^e Dep^r [III. 168; II. 278.]

Voted y^e Left Johnson m^r Jackson, obadiah brunen and m^r Payne are Appointed a Committee to p[ro]ve the sealed Copyes of the lawes & compare them wth the printed booke and to make Retourne of what they shall finde materiall to be [*ob*] tooke notice of d^c.

About Commission^s. [III. 163; II. 267.]

^{whereas} y^t all executions of orders being putt vpon vs: y^t chardges thereof to be Allowed by y^t [whole]

16 may 1649.

It is ordered y^t y^t Courts of Assistants shall take ["no"] cognisance of no case or action triable in any County Courts unless it be by way of Appeal. And that no debt or action proper to the Cognisance of any one ^{or} magis^t, or of any three Commissions^s for trial of Cases vnder forty shillings shall be entertained by any County Courts of Assistants but only by Appeals from such magists, or Commission^s as aforesaid [III. 167; II. 279.]

Whereas as the printed Laws concyning Dow'yes vpon second view and [ex]amination appears not so convenient as was formerly conceived in [eu'y] p[re]cuer thereof Itt is therefore hereby ordered that that clause towards the latter end of that order, that gives a wife a third pte of hir hus[bands money?] goods & chattells reall & personal after his husbands Disease shall henceforth be Repealed & become void & the Rest of the said order to be & Remaine in full force and virtue And it is hereby ordered & declared that those words in the 14th line of that order, viz (then by an act of [consent of such] wife) be understanded in case it be done by writing vnder [his hand and] acknowledg'd before some ^{or} magis^t to be his voluntary & free act [and so] attested by him wch being certifid shall be a full barr [] for ev' chayning any right title or interest to any such estat[te and] it is further ordered y^t [where any] husband dyes Intestate y^t County [Court] of th[] Je wh[ere the pty diseased had his] last Residence shall [] [III. 169; II. 282.]

<sup>Actions to the
cyldren which
plead []
actions to the
debtors in
the same
order
and
other
actions
to the
same
order
by both.</sup>

[12. Blank]

[13]

[Town off.] May [Town off.]

[Town off.] presented [by the] maj[or] gen[eral] touching his office to this Courte. [III. 156; II. 267.]

m^r grante John Sonnders & Rich Knight Ap'lors of y^t houses & lands &c. according to m^r garish his petition. [III. 268; II. 278.]

Courts of Assistants an order do. [III. 167; II. 278.]

<sup>Presented
and vpon</sup>

By both.

Voted 25
May 1695.

Voted 26

m^r Rob^t Sedjake for his absenting himself from the service of this house this session: was fined five pounds. [III. 156.]

Cap^t Ting for his absenting himself from the service of this house from ten of y^t clocke to wch time only he had leave² ^

Nicolas Jacob^t idem

m^r willouby for his Absence in y^t morning #1
military^t watch to continue [III. 169.]

17 may 1649.

To the honored Generall Courte now Assembled in boston.
may it please yow.

whereas I have binne formerly charged w^t conspiracy and Perjury, wch to my understanding hath not binne suffisiently gived agt me, the the Courte vpon the evidences brought against me sentenced and fined me 150^d And having searched the Records cannot yett see ["the"] sufficient evidence, to give the chardges against me wch moved me to petition this honord Courte, for a Review of my caues yett I desir the courte not to understand me so, as if I accoompted myself altogether, free of error, but have caues rather to suspect and judge myself and actions then you^t justices and posedings and being confident and experimantally assured of yo^t clemency to others, in the like kind I am boold rather to crave yo^t mercy in the favorable Remittance of my fines, then to stand either to justify myself or posedings, wch as they have (contrary to my Intentions) proved p[ro]vocall and very offensive so it hath binne is and will be my greife and trouble I shall not trouble yow w^t arguments Respecting myself and family though the burden lies heavy; in that Respect the only motive lies in your owne breasts, yo^t w[ell] wanted charity, wch will Render yow to the world mercifull and Refresh and fully satisfy yo^t humble petitioner who doth Remaine ^

The depa^t have consented in full Ans^t to this petition y^t m^r mavericks should [] one hundred pounds of his fine abated him w^t Reference to the [] ent of ou^t honored magis^t hereto Edw: Rawson cleric

[] magis^t having seriously considered of the contents of this petition cannot []d^t that the petitioners hath so farr ac-

¹ Written over "Capt."

²

knowledged himself guilty of his offence [] wch he was fined as doth give them such satisfaction as might moove [] to take of any pte of his fine. [and the ma[j]is^t [] occencoued [] early] to survey the Records in [y^t] Court [III. 168.]

[Bottom of the leaf torn off.]

[14]

Voted

that ys depo^s are not satis [R]etourn [] magis^s & therefore desier our honnored magis^s [] into their [*serious*] consideraⁿon:

Courte : Divers
Left Johnson
Edm^o. Brown
John Brown
John Jackson
Capt. Prichard
Robt. Constance
Thos. Scott
Sam. Scott
Jo. Green.

want y^t Rep.
way. were not
at y^t Courts
Johnnes & Capt
Goddie Almon:
wch would have
servid in the
Parl^y but:
Edm^o. Constance
Sam. Scott

In Ans^t to the petition of Robt Saltonstall y^t first & last section of y^t Committees Retourne is Agreed to & y^t middle pte is referred to y^t next session of y^t Courte. [III. 168; II. 274.]
m^r Nowell Capt Keayne & Capt Ting Are a Committee [*to to joyne*] w^m y^t Treasu^r & Auditor to take both their accompts betweene this & ys next session of this Courte. making Retourne thereof to this Courte. voted & sent vp. [III. 168; II. 274.]

For asmuch as it is found inconvenient & very burthenosome to the magis^s that many peons have Recourse to them for advice & counsell in cases wch are afterwards like to come to their cognizance Itt is therefore ordered that after one months publication hereof it shall not be lawfull for any peon to ask counsell or advice of any magis^s in any case wherein afterwards he shall be a plaint under penalty of being disabilited to peec[u]le any such action that he hath so grounded or takes advice in as aforesaid at the next Courte where the Case shall come to triall beinge pleaded by way of barr either by y^t deft. or any on his behalfe in wch Case the said plaint shall pay full costs to y^t deft: & y^t if any deft ask counsell or Advice as aforesaid be shall forfeite ten shillings for e^co'y offense. [III. 168; II. 274.]

Order about Impowring Constables to execut y^t lawe agt Drunkards. [III. 270; II. 281.]

A Committee w^r Bellingham m^r Nowell m^r Hill & Edw Rawson to gree the gov'e^m writings [III. 164; II. 271.]

Hugh Gallions servants 20^t: Allowed. [III. 167; II. 276.]

[Rest of the page blank.]

[16]

[] 1 day.
 []
 [] onces
 [Ja]mes Penn.
 [Ca]pt Prichard.
 w^m Purkes.
 m^r Browne.
 Ephraim child
 m^r Laiton.
 m^r Jackson.
 Capt Gooking
 m^r Paine.
 An^t. fisher.
 Edm^o. goodnow.
 Capt Ting
 Sam Bass
 Left Johnson.
 Rich walker.
 2^t 6^t fined
] 1 day.
 Absent at 11 of y^t clock
 m^r Glouer.
 m^r Jones.
 Capt Keayne.
 Eph^t Child.
 m^r Jackson.
 Nico. Jacob.
 Jo Beale.
 Left Johnson.
 lecture day Absent
 m^r Speaker
 majo^r Sedjuke.
 m^r glover
 m^r Jones.
 Nico. Jacob
 Capt Ting
 Sam Bass
 Capt Keayne

Voted

2^t 6^t

y^t: y^t husbands of this howse shall & hereby are Impowred to gather vp y^t fines of such peons as by this howse shall be fined for their Absenting themselves from the service of this howse from time to time during this Courts sitting & also the five pounds wch majo^r Sedjuke was fined last session of this Courts for his Absenting himself from the service of this howse the whole session.

19 october 1648.

Absent:

majo^r Sedjuke
 Capt Keayne
 ["Left"] m^r Clements

Absent 3^t day 22: octob^r
 1648
 Speaker [17]
 Capt. Hawthorn.
 m^r Glouer.
 Capt. Prichard
 Capt. Keayne.
 m^r Bartholomew

majo^r Sedjuke

1649

Capt. Hawthorn.

m^r Glouer.

Capt. Prichard

Capt. Keayne.

m^r Bartholomew

Committee

[16]

John Winthrop
John

¹ Forasmuch as of late [boared] Governe^r in his Death [] towards his wife & child now living, that [if] good ["the"] to bestow vpon him any thing for his ser[vice] [] it should be to his [last] child & remaine in the hands of his w[ife] [] his eduction to ["hir"]^o sd childe^r vse. And for asmuch as the court hath [] provided for the disposing of that estate in case of the death [] the [sd] Child. The magistrates concerne it Just that halfe of the said estate^r after the death of the said child, if hee live not to the yeares of one^o] should be to the vse of the now widow of o' late much hon^d Gov^r for ever. & the other halfe to the vse of M^r John Winthrop eldest sonne of o' late Gov^r [his executors or assignes] & that for this reason, That the said M^r John Winthrop sold his whole estate for the furthering of his fathers voyage for thise p^ties & most of it expended bee^r in this service.

agreed J E

[III. 161; II. 276.]

[The following is entered on the same page reversed:]

Capt Hawthorne ——
 Capt Cocking 19 ——
 Capt. Prichard 22 ——
 Capt. Ting. 23 ——
 Surveyor gen^r. 12
 Capt. Kenyne. 18
 [*Left Torrey: 17^o]⁴

The following communication from Mr. GOODELL was read, in his absence, by the Rev. Edward G. Porter: —

I have so often had occasion to express my high appreciation of the value of Mr. Noble's services in arranging and indexing the

¹ This entry is in the handwriting of Governor John Endicott. Cf. ante, p. 122, — the sixth paragraph, which records a different disposition of the Winthrop grant.

² This name appears to be in a different, though ancient, hand.

³ So entered and starred in the margin of the original.

⁴ This appears to be cancelled in the original.

Entry in the Waukesha City Hall records concerning the Waukesha Fire

Prepared for the *U.S. Society of Naturalists*
from the records of the Giffell Trust, 1884.

numerous Files and Records in his custody that in volunteering a further tribute to the surpassing value of his work, I fear I may be suspected of prejudice to such a degree as to impeach my judgment. I think it, therefore, pardonable if, in justification of my seeming enthusiasm, I declare that for more than forty years I have been more or less dependent upon that mass of historical material, and that during that time I have kept track of the efforts, now happily successful under Mr. Noble's management, which from time to time have been made to render that collection accessible to students of law and history. Forty years ago the Files of the Superior Court of Judicature, kept in a basement or cellar poorly lighted and not heated, were tied in bundles, which, being public property, had been occasionally opened for examination by any curious antiquary or professional enquirer who chose to avail himself of an undisputed privilege; and they had not been re-tied and replaced with proper care, until they were so disarranged as apparently to render hopeless any attempt to search systematically for even one subject requiring to be traced throughout the period which they covered. Both before and during this period the office of Clerk had been held by gentlemen of culture, and good lawyers,—men who had written upon historical subjects, one of them even deservedly famed as a laborious genealogist; but, apparently, because the labor seemed too hopelessly vast and complicated,—perhaps, in some instances, for want of appreciation of the value of the (seemingly) disproportionately small amount of valuable matter in this promiscuous aggregation of writing and print,—none of the predecessors of the present incumbent of the office seemed desirous, or even willing, to undertake the task with a determination to complete it. Now, however, the work has been practically mastered, not perfunctorily by a mercenary contractor as a distasteful job, but, fortunately, under the auspices of an intelligent and discriminating directing mind. I am sure, Mr. President, that long after our labors are ended, and other generations have taken up the work we shall have left unfinished, this important work will be more and more justly appreciated, and all who have contributed to it will find the record of their service a sure passport to lasting remembrance.

Every now and then we receive fresh proof of the appreciative interest which our associate takes in the fruits of his great work. To his keen discernment we are indebted for the transformation of

some obscure and neglected fragment into a key to mysteries which have baffled the most searching inquiries. Occasionally, as in the present instance, I find my own conjecture — based upon a perplexing study of the printed records, made doubly difficult by the misleading statements of the Editors of those invaluable volumes — cleared up by some discovery of Mr. Noble or of his faithful assistant, Mr. Upham. In my endeavor to ascertain the name and place which should be assigned to the Third volume of the printed Records of the Governor and Company of the Massachusetts Bay in New England, I was forced to the conclusion that it could not be any other than the series of Journals of the House of Deputies for 1644-1657, — "The Acts & Determinations of the House of Deputies," as it is declared to be at the very beginning of the book, — and accordingly I gave this as my opinion in my Address at the Old South in November, 1895, before the Society of Colonial Wars,¹ and reaffirmed it at one of the meetings of this Society.²

Now, the paper in Rawson's handwriting which Mr. Noble produces from his Files seems to me a conclusive corroboration of my view. It is a record of the May Session, 1649. Rawson was then, and during the next October Session, Clerk of the Deputies. At the opening of the next General Court, May, 1650, he was elected Secretary of the Colony; but he remained at his post as Clerk long enough to record the fact of his election, after which William Torrey, the newly-chosen Clerk of the House, began his official records in continuation of Rawson's. This was done immediately, without any indication of a break of continuity, or of such interval of time as would be required for the transcription from another record, of the book in which their handwriting successively appears. At the same time, Rawson assumed the function of Secretary of the Colony, in which capacity he served until the Charter was vacated. Though by no means as full and accurate as a model clerk should

¹ An Address delivered in the Old South Meeting-House in Boston, November 27, 1895, before the Society of Colonial Wars in the Commonwealth of Massachusetts in commemoration of the Six hundredth Anniversary of the First Summoning of Citizens and Burgesses to the Parliament of England, wherein the History of the House of Commons is sketched and a comparison made of the development of the Legislatures of Great Britain and of the Commonwealth of Massachusetts, pp. 25-37.

² In February, 1896. Publications, iii. 205-207.

be, Rawson was a diligent worker, and held many offices of trust to the entire satisfaction of his contemporaries. The original minutes of most clerks reveal many curious and frequently important items which are not found elsewhere. In the pages now brought to light we get a clearer glimpse at the proceedings of the lower House of the Assembly than we can in the extended printed records, and it is to be hoped that we may be so fortunate as to have our associate recover some portions of the earliest records of that House which mark the beginning of our present legislative system. Agreeable as it is to find my own preconceptions corroborated by this discovery, I am not sure but that I should be equally pleased if it had served to correct any of my errors or inadvertencies.

Mr. NOBLE then said:—

This Manuscript has the value and interest which naturally belong to all records of legislation in young colonies. Such legislation is the reflex of existing social, civil, and political conditions. It embodies the spirit of the Colony, and, while shaped by its history, is, to a certain extent, prophetic of its destiny. This interest the Manuscript holds in common with the printed volumes of the Massachusetts Colony Records. The Manuscript, however, goes somewhat further, for it contains not only the laws which were enacted, but also more or less of proposed legislation, suggestive of tendencies and ideas, prevailing or existing, but not yet ready to be carried out or generally adopted. The daily, original, informal memoranda scattered over its pages bring out many points of procedure and practice, of methods and customs, beyond what is afforded by the more formal and finally perfected Record itself.

Among the suggestive subjects of legislation may be noted the regulation of the practice of medicine and surgery, small matters of municipal and of private and personal concern; regulations of quarantine; the jurisdiction of the Courts of Justice; the settling of systems and forms of legal procedure; the operation of Appeals and of Writs of Error in the court of ultimate resort, — the Court of Assistants; the proceedings in Courts of Probate, and questions of their jurisdiction; the relations between the courts and the suitors

in them; the supervision of matters of doctrine and belief; and, what is perhaps especially noteworthy, the proposed legislation as to the freedom of the Press, foreshadowing ideas which failed of becoming embodied in the laws. There is also brought out the relation of the General Court to the community, its recognized functions, and the classes of cases where its interposition or assistance was or could be invoked.

Wholly aside from these considerations, however, and independent of the interest which belongs to the Manuscript from these various points of view, its chief importance seems to lie in the light which it throws upon a much-discussed question,—What is the Third Volume of the Massachusetts Colony Records as printed under the Resolve of the Legislature, of 2 May, 1853, under the supervision of the late Dr. Nathaniel Bradstreet Shurtleff? This question, upon which historical students and scholars have differed widely in opinion, has been ably discussed by our associate Mr. Griffin in his Bibliography of the Historical Publications of the New England States,¹ and by our associate Mr. Goodell in his paper on The Massachusetts House Journals, 1644-1657,² as well as by Dr. Shurtleff, in his Preface to the Third Volume, and by Mr. Whitmore in his Bibliographical Sketch of the Laws of the Massachusetts Colony. In fact, this Manuscript, from the internal evidence which it presents, from a comparison of it with the corresponding portion of the Third Volume and with the Records of the General Court in the Second and Fourth (printed) Volumes, and from an examination of the original papers in the Massachusetts Archives which are referred to in it, seems to furnish a final solution of the disputed question.

The internal evidence appears to be strong, not to say conclusive, that these old sheets, worn and mutilated by the teeth of rats, and the rough usage of two hundred and fifty years, are the original Journal of the House of Deputies, for the session of May, 1649,—the book of original entries made at the time and upon the spot.

It might naturally be regarded, upon a first or hasty examination, as merely the rough draft of what was afterward shaped and expanded into the regular Journal of the Deputies, but when Rawson's characteristic method in making records and his obvious

¹ At the Stated Meeting in April, 1895, ante, iii. 101-102.

² At the Stated Meeting in February, 1895, ante, iii. 206-207.

habits of work are considered, taking into account, also, the historical situation as it seems to be clearly made out, it is impossible to resist the conclusion that the Manuscript is the veritable Journal itself, in a somewhat fragmentary state, of that Session, and a portion of the original Journals as kept by the Clerks of the Deputies in their official capacity. Beginning with the opening of the Session, recording the names of the Magistrates, Deputies, and Officers of the Colony, and coinciding in most respects with the Record as it appears in Volume III, it is by no means a duplicate of it. The differences are many. It contains some matters not to be found there, and omits others which there appear. It is suggestive as to the way in which the records were made up: bills appear by titles; their substance is given in hints; outlines furnish the material for the subsequent extension of the proceedings; final action appears in marginal entries in different forms; sometimes it does not appear at all. The Manuscript is full of curious memoranda and notes, many of them, doubtless, made for the private convenience and satisfaction of the Clerk; some show his sharp lookout for his legitimate official fees,—noting their payment, satisfactory guarantees, and subsequent discharge; others record the fines imposed on absent members, sometimes with a suggestion of personal solicitude on the part of the Clerk that he shall fare no worse than other delinquents; and there are various little matters not appearing in the printed volume. Names of the Deputies as they voted are sometimes given, and occasionally a curious calculation appears of how easily a different result might have been reached but for certain specified and explained absences. Notes are made to refresh the memory, to fill out details, to supply some want of knowledge at the time, or to avoid the labor of setting out in full the stages of proposed legislation or the consummated result. Occasionally, the action of both branches of the General Court, and the substance of the enactment, is condensed into a single paragraph, and in a few instances a phraseology is used which, while giving neatly and briefly the whole history of a measure, would have been more appropriate in the Record of the Magistrates or of the General Court, than in the Journal of the House.¹ It is, in brief, a daily narrative of the

¹ See the sixth paragraph on page [6], the seventh paragraph on page [11] and the fourth paragraph on page [14], ante, pp. 122, 128, and 130.

proceedings of the Deputies, in a condensed and suggestive form, interspersed with passing comments, and various notes and memoranda, in quite a different shape from that which it finally assumed in the more formal Book of Copies. The closing sheet contains the beginning of the Record of the session of October, 1649. The entire document presents many different points of interest in several directions, and will repay study and consideration. Only here and there, however, in this connection, can some single matters be referred to, — and these without much regard to any logical connection or relation.

The vote as to amending the law for neglect of worship on the Lord's Day, under the date of 14 May in the Fragment, page [10], is not found in Volume III. It was probably in consequence of this vote, and of the vote on the same subject entered on page [8], that the printed law as it appeared in 1649, — no doubt the same as the law of 1646,¹ — was amended by adding the words which are at the end of the printed law of 1660, viz., "And all such offences may be heard & determined from time to time by any one or more Magistrates." It is remarkable that this amendment does not appear in the Secretary's record but only in the printed law of 1660.²

The incomplete entry as to the Liberty of the Press, on page [6], does not appear at all in Volume III. It was not until October, 1652, that a censorship of the Press was established. The order for it was repealed at the next Session and was renewed at the May Session, 1665. In view of the great interest which has attached to the whole subject of the regulation of the Press, both in Colonial and Provincial times, this early-attempted, but unsuccessful, legislation is suggestive and instructive.

It is certain that the apparent division of the text in the printed Volume III. for May, 1649 into diurnal entries is no evidence that the entries were actually so made. The text in the original is not so divided. Where, in the printed Volume III., there is an inter-

¹ Massachusetts Colony Records, II. 178.

² Massachusetts Colony Laws of 1660 (Whitmore's edition), p. 148 (original p. 26). See also p. 76 and note, where the important vote of the General Court of November, 1647, — relating to the manner of printing the Laws and the direction given to the Committee — is reprinted from the Massachusetts Colony Records, II. 200.

val of space with a date for each day, in the original there is no such interval of space and the date is only in the margin. Both text and marginal date are in Rawson's hand. Whether the marginal date and the text were written at the same time is not certain. The uniform and close character of the original text indicates that it was all written together as a Record made up after the Session would naturally be written.

The marginal dates must have been written in by Rawson arbitrarily and without regard to the facts; for there are fifteen consecutive dates from 3 May to 16 May. Two of these dates were 6 May and 13 May, each of which was the Lord's Day, — a day on which it is not to be supposed that any business was transacted. Neither of these dates (6 May and 13 May) appears in the Fragment; on the contrary, it appears, on page [10] of the Fragment, that the Court adjourned, on what was probably 11 May, or Friday, "till 2^d day next at one of the clocke," and that the Court accordingly "met at the time appointed," 14 May, which was Monday. There is in the Archives¹ an original bill, in the handwriting of Governor Endicott, passed by the Magistrates as attested by Endicott, but not consented to by the Deputies, as to wearing long hair, which has at the top the date "6 — 3 — 1649." This may be an error of date or the paper may have been drawn up on the sixth (possibly after sunset!) to be presented the next day.

The two marginal entries, "12 May 1649" and "12 May 49" on page [6], under the date "10 May 1649" in the text, may be explained by supposing that the votes were passed by the Deputies on the tenth, but were not concurred in by the Magistrates till the twelfth. It would seem, therefore, from the Fragment that although the Deputies adjourned from Friday the eleventh to the following Monday, the Magistrates held a session on Saturday. The vote on page [11], appointing a Committee to examine the printed Book of Laws, is not in Volume III. There is no evidence of any Report by the Committee nor of any action by the Magistrates in the matter, and it may have been for this reason that it was not entered in the Book of Record. On the other hand, if Volume III. is to be considered as the Journal of which the Fragment is a rough draft, this vote, as well as many other things

¹ Massachusetts Archives, xiiii. 11.

which are not to be found in Volume III., but are to be found in the Fragment, ought to appear in it.

The vote as to Major Sedgwick appears in Volume III. under date of "6 May," which was Sunday; in the Fragment, page [12], it is marked as having been passed 16 May.

Maverick's petition, which in the Fragment, page [12], is dated "17 May 1649," is, with the votes thereon, entered in Volume III. under the date "16 May."

The vote as to Pegall, on page [8], is not in Volume III.

The entry on page [16] of the Fragment signed "J. E." [John Endicott] as to Governor Winthrop's child, brings up a curious matter as to the imperfection of the Records at that time. In the Record of the General Court for October, 1652, is the following order:—

"There being a question when the countrie gave the youngest child of Jn^r Winthrop, Esq^r, two hundred pounds, which is occasioned by the losse of the record, itt being yett in the remembrance of most of the COURTE that that grant was made in the thirld month, 1649, the immediate COURTE after the decease of the said Jn^r Winthrop, Esq^r itt is ordered, that the grant of the COURTE be inserted in the COURTE records accordingly from that tyme."¹

In the margin is written "Courts grant of 200^l to Joshua Winthrop in May, 1649." The same Order appears in Volume III. (p. 293), with several slight changes of spelling and phraseology,—the word "remembrance" being changed to "perfect memory." The words "losse of the record," unless there was some strange oversight, or confusion in the records, must mean loss of the original bill, and its non-appearance on the Secretary's Record, since the record for May, 1649 appears at the end of the Second book of the Secretary's Records.² The grant of the £200 is not in that Record, but is in the Deputies' Record³ under date of 7 May, 1649, as follows:—

"It was vnaimously agreed, & voted, that two hundred pounds should be given to the infant of our late honored Godf^r, John Winthrop, Esq^r, out of the next country levy."

¹ Massachusetts Colony Records, iv. (Part 1) 116.

² Ibid. Volume II.

³ Ibid. iii. 187.

A Committee was appointed to draw up an order to put the grant "in a secure way for the child's vee." Two of the magistrates were on the Committee, as appears by a marginal note. The Vote, under date of 10 May, for disposing of the grant in case of the death of the child, is in these words:—

Disposall of ye
200 l. grant in
case Jno^r
Winthrop do
dye before he come
to 21 yeeres.

Forasmuch as our late honored Godf^r, John Winthrop, Esq^r, upon his death bed did expesse his tender desires towards his wife and youngest child, that if the country did thinke meete to bestowe any thing on him for his service done, that it should be to the said child, and remayne in the hands of his wife, for its education, and the stocks paured intire for the child's vee, and forasmuch as the COURTE hath not pridid for the disposing of the estate in case "a child should dye, the COURTE conceaveng it just, and accordingly orders, yt in case the infant dyes before it attayne the age of twenty & one yeeres, the one third pte should screw to the wyddow of our late honored Godf^r, and the other two third parts, one third to M^r Deane Winthrop, & the other to M^r Samuell Winthrop, they, as yett, having had no portions out of the Godf^r's estate, nor like to have."

It thus appears that the Court did not adopt Governor Endicott's plan in favor of John Winthrop, Jr., but made an entirely different disposition of the grant.

In May, 1651, the Court ordered that eight per cent should be paid on the £200 to Mrs. Winthrop "for the time past & till the country shall pay it in."⁴ In the Secretary's record for October, 1650, is the following entry:—

"It is ordered, that the two hundred pounds formerly granted unto Joshua Winthrop, the youngest child of John Winthrop, Esquier, lately deceased, shall be recorded in the COURTE records, which is done hereby."⁵

¹ Richard Bellingham and Increase Nowell. Captain William Tyng and Captain Hugh Prichard were the members appointed by the House.

² Massachusetts Colony Records, iii. 161. See also, *Ibid.* ii. 274, and the Vote as it appears in the Fragment, page [6], ante, p. 122.

³ Massachusetts Colony Records, iii. 220, and iv. (Part 1) 44.

⁴ *Ibid.* iv. (Part 1) 55.

There is no appearance in the original of this having been inserted. It was evidently written by Rawson at the same time as the rest of that record.

Joshua Winthrop, the youngest of the Governor's sixteen children, was the only fruit of his fourth marriage, with Martha (Rainsborough) Coytemore, the widow of Captain Thomas Coytemore.¹ He was born 12 December, 1648, and was baptized at the First Church on the seventeenth of the same month, — "being about 5 Dayes old."²

Deane Winthrop, baptized 23 March, 1622-23, who lived at Pullen Point, now Winthrop, where he died 16 March, 1703-04, at the age of eighty-one years; and Samuel Winthrop, baptized 26 August, 1627, who married a Dutch wife, and died, about 1677, in Antigua, of which he was Deputy-Governor, were two of the children of the Governor's third wife, Margaret Tyndal, daughter of Sir John Tyndal, and, with the exception of Joshua, were the youngest of his surviving children.³

The death of Joshua Winthrop on the eleventh of January, 1651-52,⁴ necessitated a final disposition of the grant. At the session of the General Court begun at Boston on 23 May, 1655, the following action was taken: —

In answer to the pet of Mr Samull & Mr Deane Winthrop on his brother Samuels behalfe, for one third pt of the 200⁵ given Joshua Winthrop, the orphan, the Court orders, that he be satisfied by the Treasurer in such pay as the country affords the 3⁶ pt of two hundred pounds due unto Mr Samuel Winthrop, provided he have & shew forth a sufficient powre, by tre of attorney or otherwise, to receive & give discharg for the same.⁷

¹ The Governor's marriage settlement with Mrs. Coytemore, dated 20 (10) 1647, may be read in the Massachusetts Colony Records, ii. 222-226. After Winthrop's death she married John Coggs, whom she survived, and after mourning the lack of suitors for her hand in a fourth marriage she committed suicide (John Davenport's letter to John Winthrop, Jr., in *Massachusetts Historical Collections*, x. 48).

² Records of First Church in Boston; *Lives and Letters of John Winthrop*, ii. 261, note; and *Boston Record Commissioners' Reports*, ix. 39.

³ *Lives and Letters of John Winthrop*, i. 177, 246; ii. 200; *Savage's Genealogical Dictionary of New England*, iv. 606-614; and *New England Historical and Genealogical Register* for 1877, xxxi. 117.

⁴ *Boston Town Records*; *Boston Record Commissioners' Reports*, ix. 34.

⁵ *Massachusetts Colony Records*, iii. 561. There is also a record of this action in *Ibid.* iv. (Part 1), 222.

It is probable that the portions of the grant reserved by its terms to the widow and to Deane Winthrop were paid over to them soon after Joshua Winthrop's death. The delay in satisfying the claim of Samuel Winthrop probably arose from his absence from the country and the slowness of communication in those days.

There is something very curious and not easily explainable about this entry or memorandum in the handwriting of Governor Endicott, and signed with his initials, which appears on the last page of the Fragment. When, why and under what circumstances it could have been made by him, why it should have taken its peculiar form, and why or how it could have got into the place it occupies, are all questions not easily answered. Is that its legitimate place, or does it owe its position to some economy on the part of Rawson? Furthermore, the result, as attested by the Governor, does not agree with the historical Record. One fact, however, is thereby well brought out, — the filial devotion and generosity of the eldest son of Governor Winthrop.

The Record in Volume III., in its general character, resembles the Records of the General Court kept by the Secretary and now contained in the printed volumes I., II., IV. and V. That these four volumes were the official Records and not Journals merely cannot be doubted. They have always been regarded as the only official Records of the General Court and were always so cited, being designated as Volumes I., II., III., and IV. No other books have ever been cited as authority, except the Body of Liberties and other printed books of Laws which, of course, were not the "public records" within the meaning of the act of October, 1648. In preparing the printed Laws of 1649 and the supplements thereto, Joseph Hills used these same books, now printed as Volumes I., II., and IV., as his authorities.¹ Any suspicion, therefore, that the only Record we have is not the official record and that the books which were the "official record" or the "public record" have been lost or destroyed would seem to be unfounded. If such loss or destruction had taken place there could hardly fail to be some notice of it in the records or history of the time.

¹ See Whitmore's *Bibliographical Sketch of the Laws of the Massachusetts Colony from 1630 to 1880* (Boston, 1880), pp. vii, 78, 127. For an extended notice of Joseph Hills and his connection with the publication of the early Laws, see *Corey's History of Malden*, pp. 165-185.

For the manifold reasons indicated this venerable Manuscript seems entitled to a place in our Transactions.

[When this paper was presented, owing to the lateness of the hour, only certain portions of it were read, and some parts then read are here omitted,—because of their fuller treatment in the following pages. In view of the light thrown by this Manuscript upon the character of the Third Volume of the Massachusetts Colony Records, it seemed to Mr. Noble advisable to submit it to Mr. William P. Upham, who has made this subject a special study, and to our associate Mr. Goodell, who, in some previous communications to this Society, has touched upon the character of that Book, inasmuch as they, together with Mr. Whitmore, may be regarded as of the highest authority upon the questions involved. To this communication, accordingly, is subjoined a Letter of Mr. Upham and his Notes, with their full and forcible presentation of the matter, and a Letter of Mr. Goodell, presenting his views and containing some very interesting suggestions.]

Mr. Upham's Letter.

JOHN NOBLE, Esq.

DEAR SIR.—Some years ago, while studying, for Mr. Whitmore, the Barlow copy of the earliest Massachusetts Colony Records, now in the Boston Public Library, I had occasion to make notes regarding the original manuscript of Volume III. of the printed Records. The Barlow copy, so called, ends with the same Court (May, 1645) with which the paged part of the original of Volume III. begins. This suggested the thought that the two together, forming a transcript of the General Court Records from the beginning (1629) to the year 1657, might have been the only duplicate record, and that it was probably used by the House of Deputies as such. At that time I identified the handwriting of the first part of the Barlow copy (to page 221,—28 January, 1641) as that of Thomas Lechford, but was not able, with certainty, to determine the handwriting of the rest of the volume, namely, that of pages 222 to 318. Since then I have made a further examination and am inclined to believe that these last pages, or a part of them, are in the handwriting of Samuel Symonds, who was a Deputy from Ipswich to the General Court, a member of the Ipswich Court

from 1638 to 1642, Recorder of Deeds for Ipswich in 1640, a member of the Dover Court in 1641, and who was chosen an Assistant in May, 1648.

It was ordered by the General Court in October, 1648,—

“that M^r Symonds shoudl have the Court booke for a fortnight or thereabouts, to perfect his coppey thereof for their shire & Co^t.¹

We may conjecture that at that time the Lechford copy, which, as Mr. Whitmore shows,² was probably made in 1640 for Endicott, then one of the Assistants, was used by him, being a magistrate of the Salem Court, both for that and for Ipswich Court, and that afterwards Symonds continued the copy for the same use. This would explain in a simple manner the meaning of the words, in the order of 1648, “to perfect his coppey thereof for their shire & Co^t.” When, in 1648, the Laws began to be printed this copy was no longer needed by the Courts of Essex County, and thereafter may have been used by the House of Deputies as forming, with their own Book of Copies, a continuous record from the beginning.

The handwriting of the latter part of the Barlow copy, at least a portion of it, resembles very strongly that of Samuel Symonds. There is a general likeness, and many peculiar marks of penmanship are common to both. It may be worth remarking, by the way, that the watermark of that part which contains a copy of the record from 1632 to 1641, is the same as that of a petition of Robert Turner at the October session, 1645.³ The watermark for the rest of the book resembles that of the first part of Volume II. of the Records (1642).

The recent discovery, among the Suffolk Court Files, of a few sheets containing transactions of the House of Deputies in 1649, confirms my belief that Volume III. was the Book of Copies of the House of Deputies. If I am right, the manuscript in the Suffolk Court Files may be properly called a Fragment of the Journal of the Deputies; meaning by Fragment, not necessarily a part of a bound book, but a broken part of some larger manuscript.

¹ Massachusetts Colony Records, ii. 48.

² A Bibliographical Sketch of the Laws of the Massachusetts Colony from 1630 to 1698 (Boston, 1890), p. ix.

³ Massachusetts Archives, xlviii. 20.

I have now, at your request, revised and enlarged my Notes, in connection with your communication to The Colonial Society of the Fragment above mentioned, endeavoring to bring together all that can be ascertained as to the true character of the different manuscripts. In doing this I have been much indebted to you for valuable assistance and suggestions.

Very truly yours,

Wm. P. UPHAM.

NOTES ON VOLUME III. OF THE PRINTED COPY OF THE MASSACHUSETTS COLONY RECORDS.

A question has arisen whether Volume III. of the printed Massachusetts Colony Records is a Journal of the House of Deputies, or a Book of Copies, for the use of that House, made up from journals or from original files and from the official Record of the Secretary.

By the Order of October, 1648,¹ the Auditor was to provide—

"four large paper books, in folio, bound up with velum & pasteboard, two whereof to be delivered to the secretary, & two to the clerks of the House of Deputies, one to be a journal to each of them, the other for the faire entry of all lawes, acts & orders, &c., that shall passe the magistrates & deputies, that of the secretaries to be the public record of the country, that of the clerks to be a book of copies."

The Secretary and Clerk were to—

"briefly enter into their journals, respectively, the titles of all bills, orders, lawes, petitions, &c., w^{ch} shalbe presented & read amongst them, what are referd to committees, & what are voted negatively or affirmatively, & so for any addition or alteration."²

At the latter end of the sessions the Secretary and Clerk were to be present at a meeting of the whole Court, or of a Committee, and "by their journals" were to—

"call for such bills &c. as hath passed either house;" [those that had passed both houses were to be delivered to the Secretary who was to]

¹ Massachusetts Colony Records, II. 289.

² Ibid. II. 289.

"record the same within one month after every sessions, which being done, the clerks of the deputies shall have liberty, for one month after to transcribe the same into his books."³

The Order also provided that all laws, orders, &c.—

"in the oylde booke, that are of force, & not ordered to be printed, be transcribed in some alphabeticall or methodical way, by direction of some committee that this Courte shall please to appoint, & delivered to the secretary to record in the first place, in the said booke of records, & then the acts of the other sessions in order accordingly, & a copy of all to be transcribed by the clarke of the deputies as aforesaid."⁴

The following Notes upon Volume III., in relation to the above Order, are arranged, for convenience, under four heads:—

I. The character of the Record itself, in whole or in part, as entered in the book, and as compared with the original papers now extant from which such a record may be supposed to have been made.

II. Citations in copies made from the Records at the time, and subsequent references to such Records.

III. The handwriting, watermarks, &c.

IV. Orders passed as to keeping such Records, and how far such orders were actually carried out or neglected.

I.

An examination of the contents of this book (Volume III.) shows that it covers the period from 1644 to 1657, and that, as appears from the title on the first page and from the general character of the whole, it was intended for the use of the House of Deputies, although containing, besides the transactions of that body, a record of the joint action of both Houses in the form of votes and orders, letters, commissions, &c. Whether this book was the Journal of the Deputies or its Book of Copies is the question. The character of its contents has led me to believe it to be the latter rather than the former.

Though at times arranged, apparently, by successive days, the entries in Volume III. are not such as we should expect to find in a record of daily transactions; nor are they such as are required

³ Massachusetts Colony Records, II. 289.

⁴ Ibid. II. 289.

for a Journal by the Order of 1648, above mentioned, namely, brief entries by title of bills, petitions, motions, etc., with minutes of subsequent action. They are, for the most part, votes as finally passed either by both Houses or by the House of Deputies.

The marginal dates in the original are often manifestly incorrect, and are generally misleading if taken to mark the date of actual sessions or the true order of the transactions. The Editor of the printed Records notices this in one instance.¹ It would have been better if, in all the volumes, the Editor had refrained from adding marginal and interlined dates not in the originals. This is especially the case where the Editor has divided the text, inserting the dates as headings. Such divisions do not exist in the original, the dates which appear in the printed page being found in the original in the margin only. In studying these printed Records one must never forget that a marginal date against one entry is no evidence that entries which follow were of the same date. Original papers now on file often show that orders were actually passed at dates very different from those indicated in the printed Records.

Everything tends to show that this Record in Volume III. was made up from the original bills, decrees upon petitions, motions, etc., then on file, and from the Secretary's official record; possibly, also, from some form of daily memoranda or "day books."

Edward Rawson, the Clerk and afterwards the Secretary, was in the habit of keeping what he called "day books." In the margin of his Court of Assistants' Record for 6 June, 1674, is entered "vide day books." There is no evidence, however, that those were anything more than sheets, arranged at times, perhaps, in folds, but, sometimes at least, only loose papers. There still remain, among the State Archives and Suffolk Court Files, a number of such loose papers containing entries of transactions of the Magistrates and Deputies as well as of the Court of Assistants and of the Council. These papers do not seem to have been parts of a bound volume. The Fragment from the Suffolk Court Files consists of five separate papers. The first three papers (three sheets) have all the same watermark, which watermark is found also in original bills of 1649 and 1651;² the fourth paper (one

¹ Massachusetts Colony Records, iii. 208, note.

² Massachusetts Archives, xvii. 11, 15.

leaf) has a different watermark; the fifth (one leaf) has no watermark.

In regard to the difficulty of supposing that no regular Journal of either House was kept, it must be remembered that Rawson, who was the person chiefly depended upon for clerical work, found great difficulty in keeping up his most important official records. These records, with slight exceptions, besides a very great number of venires, commissions, public letters, etc., he seems to have been obliged to write with his own hand, because of the meagreness of his compensation. He was Clerk of the Deputies from 1645 to 1649, Secretary of the General Court, of the Council, and of the Court of Assistants from 1650 to 1686, and Recorder for the County of Suffolk from 1651 to 1670. As Recorder he performed the duties of a Clerk of the County Court as well as those of a Register of Deeds and Register of Probate. He had also other minor employments.

At the end of the October session of 1645, he was allowed twenty marks "for the service he hath done in keeping and transcribing the Records of the House of Deputies for the time past." In November, 1646, on account of the great expenses of the Court, the "difficulty to raise small matters," and "the poverty of the country," the twenty marks were made to answer for two years instead of one, the Clerk having, however, the hope of fees for copies as "some recompence."¹

Among the instances showing this Record (Volume III.) to have been made up after, or at the close of, the sessions, are the following: —

The heading of the first page is as follows: —

"Election: 29 $\frac{3}{4}$ o 44
m

"Att a Generall Courts of Elections held att Boston, in the 4th and 5th Months, 1644.

"The Acts & Determinacōns of the Howse of Deputyes."

This and the rest of the Record for that year are in the handwriting of Captain Robert Bridges, one of the Deputies from Lynn. It is certain from the appearance of this heading that it was written with the context, and not inserted afterwards, thus proving that

¹ Massachusetts Colony Records, iii. 61, 88; ii. 167, 185.

this portion of the Record, though having marginal dates for successive days, was actually written after the close of the session. The error of calling the months the fourth and fifth instead of the third and fourth (May and June) is remarkable. The writing is unmistakably that of Bridges, though it much resembles Rawson's. Captain Bridges was a good penman, and was frequently employed in such work. His appointment as Clerk, if ever made, does not appear of record, but votes by the Deputies for that year were attested by him. At the session of the Deputies in October, 1646, he was "chosen Secretary for the first day of sitting." At the next session, in November, he was chosen Speaker.

Again, on the first page of the Record for 1645,—which, with the rest of that record, was written by Edward Rawson, the first Clerk whose appointment appears of record,—the heading is—

"At a Generall Courte of Election y' 14th 3 mo 1645 begunne & held & continued at Boston y' 3^d 4th & 5th Moth."

The record which immediately follows, to page 7, has no marginal notes for successive days, though it evidently covered a session from 14 May to 15 June, as appears by a record on page 7, where twenty pounds is granted to Sudbury towards finishing a bridge "provided it be donne wthin a twelvemonth from this time, 15 June, 1645."

In many cases original papers on file show that the Record gives only the final result of action either by the Deputies alone or by both Houses, covering often a considerable lapse of time and affected by various intermediate changes, amendments, *etc.*, not given in the Record. In some cases original votes of the Deputies, either consented to by the Magistrates or certified as sent up to them for their concurrence, do not appear in this Record.¹

On page 222 of the original of Volume III. is the following entry, under date of 8 May, 1649:—

"Whereas Leift Torrey was, the last session of the Generall Courte, employed as clarke to the Howse of Depu^ts, to frame their bills and transcribe the orders of Courtes that past the last yere fairely into their booke of records, wth he hath done, the Courtes judgeth it meete to

¹ See Suffolk Court Files, Nos. 30^r and 30^v (1647); No. 111 (1650); and Nos. 250 and 251 (1655).

allowe him flower pounds out of the next country levy, wth comes from the tounes of Weimouth, as a recompence for his paines."²

On page 223 of Volume II. (original paging) is the same order:—

"The Co'te, finding that Leift Tory was implied as clarke the last session of the Generall Co'te, to frame to the House of Deputies their bills, & transcribe fairely the ord's of that yere in their booke, (wth he hath done) should have meets & just recompence for his paines, agreed that he should be allowed out of the treasury 4^c as satisfaction for his paines, out of the next country levy, from the tounes of Waymouth."³

From page 185 (original paging of Volume III.) to page 162 is the Record for the sessions of 1648 in May and October. This is wholly in the handwriting of William Torrey ("Leift. Torrey"), and is, no doubt, the transcript made by him in accordance with the employment referred to. The Order, as it appears in Volume III., describes the book as the "booke of records" of the Deputies. It is therefore, we may presume, the same "booke of records" referred to in the order appointing Rawson as Clerk, in 1645:—

"Edward Rawson is chosen & appointed clarke to the Howse of Depu^ts for one whole yere, to enter all votes past in both howses, & those also y^d passe only by them, into their booke of reco'da."⁴

That portion of the volume which extends from page 164 to page 208 contains the Record for 1656 and for May, 1657, and is in the handwriting of William Torrey. It is evidently made up from the same original as the Record of the General Court in the printed Volume IV., since it agrees with it substantially, so far as it goes, though the order of arrangement is different. There is nothing to distinguish it as a record for the Deputies, except the record of the choice of William Torrey as "Clarke for the yere ensuinge," — 6 May, 1657.⁴

The Record from page 209 to 252 is for 1649, and is in the handwriting of Edward Rawson. The rest of the Volume (except page 258) is in the hand of William Torrey, who was chosen Clerk 28 May, 1650. It contains similar records for the Deputies, made

¹ Massachusetts Colony Records, Vol. 158.

² *Ibid.* il. 206.

³ *Ibid.* ill. 26.

⁴ *Ibid.* ill. 422.

up, probably, from "day books" or other memoranda, with transcripts from the records or original papers of the whole Court.

The following comparison of the Fragment communicated by Mr. Noble with the corresponding part of Volume III. shows that the former resembles a Journal much more than the latter.

Pages 1 and 2. — The List of Deputies has the heading —

"^{3^d} may 1649 :

"ye see'all Retournes | for Dep^t | was Read & Accepted. y^r names are ", etc.

In the printed Record, Volume III., the heading is —

"Deputyes chosen by the Townes to serve the country at this geatfull Coorte."

In Volume III. the Record has the following not found in the Fragment: —

"On the 3^d May, 1649, entered & passed : 1649."

In the margin of the first entry, as to Gedney's petition, is written "sent up," which is not in Volume III. Also "m^r Auditor gen^lall" was cancelled and "Capt. Keayne" substituted. In Volume III. only the substituted name appears.

The third and fourth entries and others throughout the Fragment show, in a similar way, that it contains the original votes and memoranda, and that the record in Volume III. was written afterwards, leaving out what had ceased to be important.

Generally, the Fragment answers the requirements of the Order of October, 1648, as to the Journals. Thus, in the Fragment, under date of 3 May, the petition of Edney Bayly is simply entered by title, and the action upon it briefly noted. The order by both Houses appears under date of 4 May. In Volume III. the full order of the Court is given under date of 3 May.

So in the fifth entry, as to the agreement with Phillips, etc., the order that it "shall be entered amongst the Records of the Courts" is only briefly stated with the memorandum "with 3 Additions: enquier:" In Volume III. the agreement is recorded and the three additions are given in full.

The ninth entry, as to new business "this session," does not appear in Volume III.; for the reason, we may suppose, that, the

Record being made up after the close of the session, this entry was no longer important.

Page 8. — The same difference is shown in the entries as to the "petition of Hull men." In Volume III., under date of 9 May, the words are —

"the 15th day of this instant was appointed for a public hearing of the case, w^m was attended in the meeting howse."

This is followed by a full statement of the subsequent votes.

Pages 9 and 10. — On these pages are entries, probably, for 11 May, 1649, as they correspond generally with those for that date in Volume III. The date "5 May 1649" against the entry as to "m^r maverick" is perhaps the date of the "former graunt or promise" therein mentioned. That it is not the date of the entry itself appears by the vote for adjournment "till 2^d day next," which was Monday, the fourteenth of May.

Some of the entries on these pages are more fully recorded in Volume III. The petition of "misticke side," for instance, is only mentioned in the Fragment, while the vote making it "a distinct town by the name of Maulden" is recorded in Volume III..

II.

The Record printed as the Third Volume in the series of General Court Records should not have been so treated, but should have been made a supplementary volume. Making the book Volume III. of the series introduces confusion, citations from the printed Records disagreeing with the ancient citations from the originals. For example: a copy of a record of 12 May, 1675, as to a petition of Henry Adams, is certified by J. Willard, Secretary, as of record "Lib. 4, p. 86"; another of 12 May, 1675, as to Haverhill bounds, is certified by Isaac Addington, Secr^y as from "Lib. 4, p. 89"; also a record of 15 May, 1667, is certified by Addington as from "Lib. 3, p. 585."¹

¹ Suffolk Court Files, No. 1379, 1st paper, and No. 1380, 1st and 2nd papers. The printed volumes containing the Records cited are numbered V. and IV., respectively.

Contemporary references¹ to the original of the printed Volume III. describe it as the "book of records" or "booke of copies" of the House of Deputies.

In his Bibliographical Sketch of the Laws of the Massachusetts Colony (p. 78, note), Mr. Whitmore gives in full the Order of October, 1648 (which required two books to be kept by the Secretary and two by the Clerk, and also provided for the transcription of the old laws, orders, etc.), and mentions in that connection "the references,² May 19, 1658, to various books of records, when the laws about Constables were collected and codified." He then states that —

"none of these various records and compilations of laws are now extant at our State House. The continuous record to 1686 exists and one volume (1644-1657) of the Journal of the Deputies."

He refers again (p. 114) to the Summary of the laws as to Constables, made in 1658, which cites "Lib. 1," "Lib. 2," "Lib. 3," and "Lib. 4," and adds —

"This may be a mere coincidence, or it may confirm our theory that before 1660 there were these four books of printed laws: especially as Liber 1 runs to p. 55. I have not been able to thoroughly investigate the references, some of which are very puzzling."

The supposition that the four books referred to in the Summary as to Constables, mentioned by Mr. Whitmore, were books of record, and that they or some of them may have been Books of Copies now lost, may have led to considering Volume III. as only a Journal. It is certain, however, from a careful study of those references, that the four books were not books of record, but were, as Mr. Whitmore intimates that they may have been, the four printed books, the Code of 1649 and the three Supplements which Mr. Whitmore has shown, with such admirable skill, were in existence in 1658, though no copy can now be found.

An examination of the Summary as to Constables,³ besides ex-

¹ See the Order for the payment of Torrey, 8 May, 1648, and the Order appointing Rawson Clerk in 1648, mentioned above; also the grant to Torrey of Isle Island in November, 1658. (*Massachusetts Colony Records*, iv. (Part 1) 257.)

² *Massachusetts Colony Records*, iv. (Part 1) 254.

³ *Ibid.* iv. (Part 1) 256-257.

plaining the origin of these citations, brings to light a number of new items as to the form of these earliest printed books of Laws. It may be well, therefore, to take this occasion to present the matter in detail.

The first of these printed books, "Lib. 1," was the Code of 1649, of about 56 pages; the second was the Supplement for certain omissions and for 1649 and 1650, of about 17 pages; the third was the Supplement for 1651 to 1653, of about 20 pages; and the fourth was the Supplement for 1654 to 1657, of about 26 pages.¹

The highest page number cited in the Summary for Lib. 1 is 55; for Lib. 2 is 10; for Lib. 3 is 18; and for Lib. 4 is 26. These figures agree with Mr. Whitmore's estimate as to the size of each book.

The first five sections of the Summary and the eighth section, which contain general legislation as to Constables passed in October, 1641, and May, 1646,² cite Lib. 1, p. 18 and p. 14. Turning to Mr. Whitmore's Table,³ showing the alphabetical titles that "were certainly in the printed Code of 1649," we find "College" for p. 12 and "Conveyances fraudulent" for p. 14. We may conclude that there was also in that Code a title "Constables" for p. 18, and part of p. 14. This is confirmed by some cancelled words on the original order as to "Youth's Miscarriage,"⁴ passed in October, 1651.⁵ That order authorizes constables "to act herein as is provided in reference to the Law of Innkeepers," and these words are followed in the original bill by the cancelled words "3 m° 1649 Title Constat," the meaning of which, no doubt, was that there was a title "Constables" in the Code of 1649. Section 5 of the Summary directs constables to search for "persons overtaken w^m drinke," etc., in inns, etc., and is derived from the law of May, 1646, above referred to. It cites "Lib. 1, p. 18." Section 5 also cites, from Liber 1, page "31, tit. Drunkeness," probably referring to a sub-title, "Drunkeness," under the title "Innkeepers."⁶

Of the twenty-six sections of the Summary, nineteen cite "Lib. 1," and all these nineteen contain legislation prior to 1649.

¹ *Bibliographical Sketch*, etc., pp. 84, 108-114.

² *Massachusetts Colony Records*, i. 230; ii. 150.

³ *Bibliographical Sketch*, etc., p. 108.

⁴ *Massachusetts Archives*, xlii. 15.

⁵ *Massachusetts Colony Records*, iii. 242.

⁶ See *Massachusetts Colony Laws* (edition of 1690), pp. 43-45.

Section 6, which cites "Lib. 4, p. 16," was in the order of May, 1646;¹ but there were later acts² as to commitment of offenders, and all may have been brought together in "Lib. 4."

Section 7, which cites "1 Lib. p. 19," is taken from the law of May, 1646. Here the "19" may be a clerical error for "18." Section 8, which is from the same law, cites "Lib. 1, p. 18."

Section 9 cites "Lib. 1, p. 26" for a law as to "common coasters," idle persons, *etc.*, passed in 1638. This would come under a title "Idleness" on page 26 of the 1649 Code and between "Highways" and "Impost."³

The second part of this Section 9, which relates to the order of October, 1651,⁴ as to harboring young people, cites, in the original Record, "Lib. 4, p. 5."⁵ This citation may indicate that the law was first printed or was repeated in the third Supplement.

Section 10 cites "Lib. 1, p. 27" for a law as to "custome masters of wines," *etc.*, passed in May, 1648.⁶ This was, no doubt, under the title "Impost" on page 27 of the Code of 1649.

Section 11, for the law as to levying of rates, *etc.*, passed in November, 1647,⁷ cites "Lib. 1, page 46," thus indicating a title "Rates" for the Code of 1649, coming between "Punishment, p. 45" and "Records, p. 47." For the order as to fines, *etc.* (May, 1654),⁸ it cites "Lib. 3, p. 2, 3,"—probably an error for "Lib. 4, p. 2, 3." The edition of 1660 (p. 76) has similar provisions and cites in the margin "A[anno] 54, p. 2."

Section 12, as to gathering town rates, October, 1657,⁹ cites "Lib. 4, p. 26." The edition of 1660 has the same provision, under "Constables," and cites "A[anno] 57, p. 26."

Section 13, for an order passed November, 1655, as to clearing accounts by the first of May,¹⁰ cites "Lib. 3, p. 18,"—probably an error for "Lib. 4, p. 18."

Section 14 is the law of 1637 and 1639 as to lost goods and strays. It cites "Lib. 1, p. 48." This adds another title to Mr.

¹ Massachusetts Colony Records, ii. 150.

² *Ibid.* iv. (Part 1) 267, 305.

³ See also Massachusetts Colony Laws of 1660, p. 38.

⁴ Massachusetts Colony Records, iii. 242.

⁵ The citation (Lib. 1, p. 27) in the printed volume is an error of the press.

⁶ Massachusetts Colony Records, ii. 246.

⁷ *Ibid.* ii. 212.

⁸ *Ibid.* iv. (Part 1) 268.

⁹ *Ibid.* iv. (Part 1) 185.

¹⁰ *Ibid.* iv. (Part 1) 267.

Whitmore's Table for 1649, namely "Strays, p. 48," or, as Rawson writes it, "Strajes," coming between "Schools," p. 47, and "Strangers," p. 49.¹

Section 15 contains the constable's duties relating to the watch, from the laws of March, 1638-7, May, 1640, and May, 1648; and cites "Lib. 1, p. 51." In Mr. Whitmore's Table is "Watching" for p. 52. It probably occupied also a part of page 51. The citation "Lib. 1, p. 16," probably refers to some provision under "Courts" or "Coroners." Another citation—"Lib. 4, pag. 12, 25,"—is for laws passed in May and October, 1652, and May, 1657.²

Section 16, for orders, passed in October, 1652, May, 1656, and May, 1657,³ as to commitment of offenders, cites "Lib. 4, p. 16." (See above under "Section 6.")

Section 17, from the law of November, 1647, as to weights and measures,⁴ cites "Lib. 1, p. 51," adding a title "weights & measures" to the Code.

Section 18, as to serving attachments, has the interesting citation "Lib. 1, p. 55, tit. Praesid."⁵ This would indicate that at the end of the Code of 1649 there was a collection of matters of form or custom not found in any express law. In an order of October, 1649,⁶ for printing the Laws enacted since the publication of the first book, there is added "as also therewith to prepare those lawes referred to in the end of the printed lawes, with a suitable table to be printed." The edition of 1660 (pp. 88-8) has a table of "Presidents and forms of things frequently used."

Section 19, for a law of October, 1649,⁷ amended in October, 1652,⁸ cites "Lib. 2, p. 10." The 1660 edition has the same citation under "Elections."

Section 20, from an order of October, 1654,⁹ cites "Lib. 3, p. 9,"—probably an error for "Lib. 4, p. 9." Section 21, on the other hand, cites for an order of August, 1658,¹⁰ "Lib. 4, p. 20." This

¹ See Massachusetts Colony Laws (edition of 1660), p. 72.

² Massachusetts Colony Records, iv. (Part 1) 83, 106, 203.

³ *Ibid.* iv. (Part 1) 103, 263, 293.

⁴ *Ibid.* ii. 211.

⁵ *Ibid.* ii. 266.

⁶ *Ibid.* iv. (Part 1) 268.

⁷ *Ibid.* ii. 266.

⁸ *Ibid.* iv. (Part 1) 101.

⁹ *Ibid.* iv. (Part 1) 162.



should have been "Lib. 3, p. 20." The 1660 edition cites, under "Marshal," "A[nn]o 58, p. 20." This confusion of "Lib. 3" and "Lib. 4" was, perhaps, natural, as the third Supplement was the fourth book of laws.

Section 22 directs the constables to act as coroners and is the 57th article of the Body of Liberties. It cites "Lib. 1, p. 16," suggesting a title of "Coroners" between "Cornfields" and "Divorcee."

Section 23, as to warning persons living apart from their husbands or wives, from the law of 1647,¹ cites "Lib. 1, p. 37." It probably came under "Marriage" in the Code.

Section 24, the law of May, 1658,² as to refusal to serve as constable, cites "Lib. 4, p. 18,"—probably an error again for "Lib. 3, p. 18." (See above under "Section 20.") The 1660 edition, under "Township," has it "A[nn]o 58, p. 18."

Section 25, as to pursuit of runaway servants, etc.,—law of September, 1635,³—cites "Lib. 1, p. 38." This was, no doubt, under "Masters," etc., p. 38 in the Code.

The last Section, 26, as to informing against "new-comers," etc., from the laws of May, 1637, and September, 1638,⁴ cites "Lib. 1, page 39," adding another title, "New-comers," for page 39 of the Code.

III.

An examination of the Watermarks shows that Volume III., so called, was made up of several parts. The binding into one book, however, must have taken place at a very early time. The first seven leaves, containing the record by Bridges, were not paged at all, but the rest of the volume is paged successively and in an ancient hand,—probably Rawson's.

The following Table, presenting in one view the handwriting, watermarks, and dates, may, perhaps, help to show the make-up of the book, and to suggest the order of time when the different parts were written. The three different watermarks are designated by A, B, and C. The first seven leaves contain seven written pages, which are marked 1^o to 7^o in the printed volume:—

¹ Massachusetts Colony Records, II. 211.
² Ibid. I. 157.

³ Ibid. IV. (Part 1) 121.
⁴ Ibid. I. 196, 241.

Page.	Handwriting.	Watermark	Date.
1 ^o to 7 ^o	Bridges	A	May, 1644
1 to 104	Rawson	B	May, 1645 to November, 1646
105 to 107	"	A	November, 1646 to May, 1647
107 to 110	Torrey	"	
111 to 118	Rawson	"	
114 and 115	Torrey	"	
116	Rawson and Torrey	"	May, 1647
117 and 118	" " "	"	"
119 and 120	Rawson	"	October, 1647
121 to 124	[Blank]	"	
125 to 130	Rawson	"	October, 1647
131 to 134	[Blank]	"	
135 to 145	Torrey	"	May, 1648
146 to 148	[Blank]	"	
149 to 162	Torrey	"	October, 1648
163	[Blank]	"	
164 to 208	Torrey	"	May and October, 1658 and May, 1657
209 to 238 ^a	Rawson	"	May, 1649
238 ^b to 244	"	C	October, 1649
245 to 253	"	A	October, 1649 & May, 1650
254 to 476	Torrey	"	May, 1650 to October, 1655

It will be noticed that four blank pages occur in the record for October, 1647, and four more at the end. These may have been left to give room for certain important records omitted at the time by the Clerk as appears by the Secretary's record for that session.

From the facts indicated by the above Table we may conjecture that this first volume of Records for the Deputies began with a small book of about twenty-six sheets, in which Rawson entered the record for 1645 and 1646; that he then enlarged the book by adding folds at the end and also one fold at the beginning. In this fold Bridges entered the record for May, 1644. Some pages of this fold were left blank. Perhaps it was intended for the record of October and November, 1644, which is not in Volume III.

Torrey assisted Rawson in keeping the record for 1647, and, by special employment of the Court, as already stated, kept the whole of the record for 1648. When Rawson began again with the record for May, 1649, he left forty-five pages blank, in which

Torrey, long after, entered the record for 1656 and 1657. This explains the grant to Torrey of Slate Island in November, 1659,¹—"he having now perfected the Deputies booke of copies of records."²

IV.

Although orders were passed at various times as to the manner of keeping the Records, such orders were not always carried into effect. In general, it may be said that the Record was kept during most, if not all, of the Colonial period after the manner indicated in the order of 17 June, 1629, appointing a Committee—

"for reducing of all former orders into a methode," etc., ". . . whi
are then by the Secretary to bee entered into a faire booke to bee kept
for that purpose, according to the usage & custome of other Com-
paniees."

That is, the orders, votes, etc., were written originally on bills, petitions, reports, motions, etc., as presented, and were placed on file; and these files were subsequently arranged or "reduced to a method" and the record made up from them.

For part of the time some sort of "day-book" may have been kept for entering briefly the subject of votes, petitions, etc., but probably only in the form of loose sheets or folds as indicated by a few such sheets still preserved among the Files, as already mentioned.

The Order of October, 1648, seems to have been an effort to introduce a more thorough method of keeping the Records by providing for a Journal of each House as well as a Book of Records. It is evident, however, that the provisions of that order were never carried into full effect, the reason being, perhaps, that the expense which would have been incurred by undertaking to keep up a double set of books for each House rendered the plan impracticable, and that the printing of the Laws, which began at that time, made it less important.

Rawson seems to have endeavored to comply with the order in a measure. He left a large part of the Book of Records for the

¹ Massachusetts Colony Records, iv. (Part 1) 38, 407. The Island lies off the mouth of Weymouth Back River.

² The wording in this grant indicates that in November, 1659, the Deputies had but one "booke of copies."

Deputies blank, perhaps to make room for the old, unprinted, laws and orders required to be entered before the record for 1649. This blank was filled by Torrey with the record for 1648, and afterwards with the record for 1656 and part of 1657. The provision for a transcription from the "old booke" was, so far as there is any evidence, wholly neglected. The other provision as to the bills, etc., remaining with the Governor or with the Speaker was found inconvenient, and was practically repealed by an order of 23 May, 1650.¹

There is no evidence that the "four large paper books in folio," mentioned in the Order of October, 1648, were all provided. The Third Volume of the Secretary's Record (Volume IV. of the printed Records) is a very large folio, and corresponds with the requirements of the Order. It covers the time from 1650 to 1674, and was wholly written by Rawson. The watermark is the same throughout.

The description of Volume III. given above indicates clearly that the Clerk of the Deputies, for want of a new "large paper book," used for his Book of Copies the smaller old book which had previously been used for a similar purpose.

From all those considerations we may conclude that this Volume III., so called, was a "booke of records" for the use of the Deputies, containing transcripts, not only of their transactions, but of the joint action of both Houses, for the years 1644 to 1657; we may also reasonably infer that no regular Journal, in book form, was kept by either House, and that the keeping of a Book of Copies by the Deputies was discontinued after 1657.

Mr. Goodell's Letter.

JOHN NOBLE, Esq.

MY DEAR SIR,—In compliance with your request I had prepared a review, in consecutive detail, of the several points dwelt upon by Mr. Upham in his Notes on Volume III. of the printed copy of the Massachusetts Colony Records. In that paper I had combined the substance of what I had previously said upon the same subject at meetings of The Colonial Society, and elsewhere,

¹ Massachusetts Colony Records, iv. (Part 1) 8.

and what I had written to Mr. Edes to be communicated to you, together with some reinforcement of my argument in support of a theory at variance with Mr. Upham's conclusion; but upon mature reflection, I have reduced what I have further to offer to a briefer compass, from a conviction that the re-statement of undisputed facts would not only needlessly encroach upon the space which the Committee of Publication has to apportion among all contributors to our Publications, but would rather darken than illumine whatever may have already appeared obscure or debatable.

The question in dispute is not whether Volume III. of the printed Colony Records is a Journal of the House of Deputies such as is described in the Order of the General Court passed in October, 1648. On the contrary, I think that connecting the journals proposed in 1648 with the journals which, presumably, the Deputies must have kept from 1644, — the date of the separation of the Freemen and Deputies from the Assistants, in imitation of the two Houses of Parliament, — tends to confound two entirely distinct matters, in such manner as, in considering the nature of the "book of copies," to bewilder the mind by taking it back four years before any such book existed, or, so far as we know, was thought of. With our minds freed from this confusion, we shall find, I think, less difficulty in recognizing in Volume III. the character it professes to hold; that is, simply, a record of "The Acts & Determinations of the House of Deputies," — in other words, the House Journal.

I do not deem it important to inquire whether this Volume III. is the original draft or a compilation of original minutes, since in either case it would not affect the character of the book as being, essentially, a journal, all journals being more or less compilations from previous minutes; and the fact that the Secretary's records and the Clerk's entries were evidently compiled from a common source is as strong an argument, certainly, that both were journals, as that either was another kind of record. Nor should we expect to find a rigid compliance with the directions of the Order of October, 1648, in regard to the Clerk's entries in his journals, since those directions were clearly permissive and not restrictive. Still less important is it to dwell on the irregularities and anachronisms which abound in the book in question. These faults, which are common to all journals, do not strengthen the argument that Volume III. is not a Journal, but rather sustain the theory that it

could not be a book of copies of laws and orders which the Order of 1648 implies was its exclusive purpose and in which, therefore, we should expect to find nothing else. The fact that the first printed Journals of the House of Commons were not composed in regular order, and strictly conformably to the course of legislative proceedings, and that, evidently, they do not embrace all that was said and done in the House, has never been alleged against their legitimacy.

The least convincing argument against the theory that Volume III. is a book of Journals of the House is that it recites certain proceedings of the upper branch of the Legislature. A sufficient answer to this is, that these recitals of the doings of the coördinate branch always have been, and still are, a necessary feature of the legislative journals of either branch; since this is the only way in which concurrent action of the two branches can be intelligibly put upon record.

Having thus eliminated some principal sources of confusion and false inference, we come to the question, Is it a "book of copies of records" kept by the Clerk of the House? Mr. Upham's surmise that the system prescribed by the Order of October, 1648, was never practically adopted to the full extent, seems to me plausible. In deference to his judgment, founded upon his conscientious and more careful study of the subject, and borne out, in some degree, by the virtual repeal of an important part of the Order of 1648, two years later,¹ I am willing to believe it probable that the "four large paper books, in folio," mentioned in the Order — two for the journals of the respective branches, and one each for the Secretary and the Clerk of the House, "for the faire entry of all lawes, acts & orders, &c., that shall passe the magistrates & deputies," (the former "to be the public record of the country," and the latter "to be a booke onely of copies") — were never procured as the Order required; but if this be the fact it certainly ought not to change our judgment as to the practice which prevailed before 1648, nor, even if the scheme of 1648 was wholly abandoned, does it follow that books — not journals for recording the doings of the House, but, exclusively, for the entry of copies of "orders that have passed the approbation of both magistrates and deputies" — were not kept by the Clerk of the House in addition to his journals.

¹ Massachusetts Colony Records, iv. (Part 1) 2.

The collecting of the Laws and recording them in a "faire booke to be kept for that purpose," independently of the General Court Records, seems to have been an established practice as early, at least, as the order of 17 June, 1629, to which Mr. Upham refers. It may yet be possible to ascertain how many collections of this sort were made and promulgated in manuscript before the first revision in 1641 was published under the name of *The Body of Liberties*. It was from such a collection, probably, that the twenty-two of "Captain Endicott's lawes" were copied and exhibited "to the Lords."

We may confidently assume, I think, that the practice continued after the manner thus early adopted, until the separation of the two branches of the Legislature in 1644, when the new exigency required a modification of the former method. Accordingly, we find that the ordinance establishing separate sittings of the two branches of the Legislature provided that, "when any orders have passed the approbation of both magistrates and deputies then such orders to be ingrossed and, in the last day of the Court to be read deliberately, and full assent to bee given." By "ingrossed" orders, I infer, is meant orclers fairly transcribed into books kept for the purpose or on sheets to be bound up into such books, and such, we may conclude, were the laws, orders, etc., "in the ould booke" that, as Mr. Upham shows, were, in October, 1648, for the first time, ordered to be transcribed "in some alphabeticall or methodical way," by direction of a Committee and delivered to the Secretary to record, and then to be transcribed by the "Clarke of the Deputies."

This inauguration of the alphabetical arrangement of the laws affords another clew to the nature of the Secretary's record of the laws, and of the "book of copies" which the Clerk of the House was directed to transcribe therefrom, since it tallies exactly with the method pursued in all the printed editions which began that same year. It is not a rash supposition that these printed laws followed the manuscript Records in the order of the titles as well as in the tenor of the ordinances. It may even be the fact — notwithstanding Mr. Upham's elaborate confirmation of Mr. Whitmore's ingenious hypothesis that the books cited by numbers in the margin of the printed Colony laws were the first printed edition and its supplements — that these printed copies were from

manuscript originals of substantially the same page-numbers. In forming a theory as to how and when these manuscript books disappeared, we are justified in admitting the possibility of their having been used by the printer as copy; for, not until the introduction of the present system during the period of the "Usurpation," do we find in the Archives copies of the laws and orders systematically arranged and regularly preserved; and we know that, as a rule, during the Provincial period, the original House Journals were sent to the printers, and were never returned; but I confess it seems to me more probable that these manuscript records of the laws continued in unbroken series during the Colonial and Provincial periods until they perished in one of the great fires which wrought such havoc with the public records in Provincial times. As a general rule it is safe to assume that a custom is as old as the conditions which induced it. Throughout the Provincial period there can be no doubt that, besides the Bills which passed into the Secretary's files upon their enactment, and the parchment engrossments of these Bills, which were enrolled, the Secretary customarily kept a regular series of records of the perfected Acts. When, may it be asked, if not early in the history of the Colony did this custom begin? If there is any reason for believing it to be of more recent origin, it cannot be that it was more necessary at the later period, when the Acts of the Legislature were promptly published throughout the Province by the sound of drum and trumpet, and regularly printed and disseminated at the end of every session. To continue the parallel, it may be added that the earlier volumes of records of the Acts of the Province were consumed by fire when the old Town and Court House was burned; and may it not be reasonably surmised that, among the other books which perished in the conflagration, the records of the Colony Ordinances were included?

However improbable, it is not impossible that the custom of keeping a *duplicate* manuscript series of the Ordinances was abandoned not long after the laws began to be printed. That such a change might have quietly taken place is not an unparalleled event. We have a similar instance in the abandonment of the custom of making up from the Journals of the two branches of the Legislature, and from the documents on file, the so-called Records of the General Court, which senseless practice was con-

tinued for a half-century or more after the adoption of the Constitution of the Commonwealth. This superfluous labor, which was quietly stopped by the Secretary without authority from the Legislature, had been kept up in blind deference to the idea that there must be such a series of Records distinct from the Journals of the House and of the Senate. It was an error based upon a false tradition by which, throughout the Provincial period, the Legislative Journals of the Governor and Council were regarded as properly the Records of the whole Court, and so designated. The mistake is traceable to the condition of affairs prior to the Order of October, 1648, when the General Court sat together in one chamber, and also to the provision in that Order making the Secretary's Record of the laws and orders the authoritative copy.

I fail to find in any of Mr. Upham's citations from the Records of the Governor and Company of the Massachusetts Bay, or elsewhere, anything which conclusively substantiates his theory that the original of the printed Volume III. is the "book of copies of records." It is, at least, as probable, it seems to me, that the book of records which Lieutenant Torrey completed was such a book as was contemplated in the Order of October, 1648, as that it was the record filled in on the blank pages to which Mr. Upham refers.

A conclusive objection, it seems to me, to the theory that Volume III. is a book of copies of the laws, etc., is its utter failure to answer to the description of the record of engrossed orders,—that is, completed acts of legislation formally and deliberately read on the last day of the session under the Order of 1644—or to the copy of the record of laws, acts, and orders for the recording of which, by the Order of October, 1648, the Secretary was allowed a whole month after the end of the session, and for the transcription of which the Clerk was thereafter allowed another month. How is it possible that in the ample time granted him the Secretary could fail to separate the laws and orders concurrently passed by both branches, from the vast variety of trivial or incidental proceedings with which the pages of Volume III. are crowded? That a book exclusively set apart for the record of ordinances carefully called from the files and securely kept together until the close of the session, and then read before the whole assembly, and not recorded until after they had received the final assent of the legislature,

could suddenly degenerate into a jumble of legislative details, appointments, and reports of committees, elections of officers, motions, petitions, amendments, and all sorts of interlocutory proceedings, seems incredible even with the most liberal allowance for the prevalent crudeness of legislative methods and practices, and the immethodical habits of clerks. It does not seem possible that the Legislature would have tolerated a disregard of the undoubted intention of its clearly expressed mandate, and submit to such illegal waste of time and labor and such confusion of important with unimportant things. Above all, how can it be believed that every entry in Volume III. was, at the close of the session, solemnly propounded for the assenting voice of the whole General Court!

Very truly yours,

A. C. GOODELL, JR.

Mr. HENRY H. EDGES read the following paper on —

JOHN DAVIS OF YORK

AND HIS

THANKSGIVING PROCLAMATION OF 1681.

WHILE searching recently among my papers for another document, I came upon a small sheet $8\frac{1}{2} \times 5\frac{1}{2}$ inches in size, which proved to be an original Proclamation of Thanksgiving, issued on the seventh of December, 1681, by the Deputy-President of the Province of Maine. The text of this State Paper, which I have brought here for your inspection, is as follows: —

Provence of Mayne in New England ye 7th of Decemb^r
1681

You, & all of us being sensible; of ye goodness of ye Lord in Remembering Mercy, to wch his People in ye Wilderness in the midst of Judgment, wch we have had Experience of, since in ye time of ye late Drought, he did grately inclaine his Ear, to ye Prays of his People, in sending downe seasonable Showers of Blessings from Heaven, so as yt the Harvist this yeaer, hath not wholly failed, as once was Casse to fear; itt might have done being alsoe sensible of ye devine favour as yett Continued to us in Respect of our Liberties, both Sivil, & Sacred, & ye Publick Peace, & Health, wch God hath ye Last yeaer: blessed ye Land with, & yt Thankfullness for such invaluable: Mercies is ye way still to enjoy them.

Therefore

By Advice of ye Honored President
of this Provence

I doe appoint ye 21st of this instant Month Decembr to be observed,
as a day of publick Thanksgiving, throughout this Provence, & doe
hereby prohibit all servill Labore one ye sd day, Exhorting all both
Ministers, & People, solemnly to Prays ye Lord, for these greatt things,
whch he hath heather to done for us.

JOHN DAVIS Deputy pres't.¹

Failing to find any recognition of this paper in Dr. Love's Fast
and Thanksgiving Days of New England, or any reference in print
to this official act of the Provincial Executive, I submitted a copy
of the Proclamation to the Hon. Joseph Williamson, one of the
highest living authorities on matters pertaining to the history of
Maine. In due time I received from Mr. Williamson the following
statement: —

"An examination of all the historical works bearing upon Maine
history during the administration of President Danforth, and his Deputy,
John Davis of York, satisfies me that the interesting Thanksgiving
Proclamation of 1681 has never appeared in print. Although every
subject of public interest, following the usage and example of Massa-
chusetts, came under the cognizance of these magistrates, and the court
over which they presided,² I do not find any allusion to this official

¹ This line is wholly in the handwriting of John Davis.

² The following extract from the York Court Records is of interest in this
connection: —

"At a Generall Assembly holden at Yorke June 29th: 1682: An order of the
President for a sermon Annually on thursday, being the second day after the Meeting
of ye Generall Assembly.

It being the Hous' [i. Hon'r] as well as the duty of Civill Magistrates, to Incourage
the Ministrey & worship under y' juristicion, which by reason of the absence of the
Chiefe Magistrate of this Province and y' remoteness of the Ministers habitations, y' is
a want of opportunity for the knowledg of them.

It is yfere ordered by y' President & Councill, that upon y' second day of the
Meeting of this Generall Court Annually some one of y' Reverend Elders or Ministers
be desired to preach a sermon to y' General Court, for the better promouing of an
acquaintance between the Government & Ministers & that of Civill transactions may be
sanctified by the word and prayer, the Annual Choyse to be made by the President, or in
case of failure to bee reasonably supplyed & done by the Deputy President & Councill,
June 29: 82: Mr. Dummer was nominated for y' next yeare 1683."

This extract was communicated by Mr. Nathaniel Jones Herrick, of Alfred,
Maine, to the New England Historical and Genealogical Register for January,

Provence of Maine in New England, by J. Greenleaf
1681

If you shall of exhorting hisfelfe of a goodly City Lord in Ruling
Provence, to make it a day of thanksgiving, in the month of
Decemb're, in the Court of his Gouvernor & of Forte, 1681
Time of y' late Pres'nt, he did graciously issue
his p[ro]p[ri]etary Mayor of his People, in finding done
long before the hour of thanksgiving from Clearence to
the said stadt 1681, h[ad] not wholly failed, as one
was bounde to fear, it might have done, being off
y[er]e 1681, y[er]e 1682, y[er]e 1683, y[er]e 1684
R[es]p[on]t of his Libtice, h[ad]l. B[ea]ll, R[ob]t. Bacon, M[ar]t.
P[re]b[il]ic[al] S[ec]r[et]y, S[ec]r[et]y of Health, w[ere] y[er]e health & fort[une]
bl[ea]zed y[er]e 1681, 1682, 1683, thankfulness for such a
valuable service is y[er]e may still to 1685 I hope.

Therefore 1681, 1682, 1683, 1684, 1685
By the Honored President
of this Provence.

Done & signed by 1681 of this instant Month Decemb're
To be observed as a day of publick Thanksgiving, &
throughout this Provence to bee held y[er]e
1681, 1682, 1683, 1684, 1685, 1686, 1687
H[ow]ever, if Peoples, soe shortly to Prey y[er]e X[mas] & fort[une]
great thing, soe that best heat[ure] to doo for
them aduise abayly y[er]e good for

In the

By Advice of ye Honored President
of this Province

On ye 21st of this instant Month Decemr: to be observed
as a day of publick Thanksgiving, throughout this Province. And
to require all servl: Labore one ye sd day, Exhorting all the
Ministers & People, solemnly to Pray ye Lord, for these greatt thngs
which he hath hearken to done for us.

JOHN DAVIS Deputy pres^t.

Having to find any recognition of this paper in Dr. Love's Fast
and Thanksgiving Days of New England, or any reference in print
to this official act of the Province in Executive, I submitted a copy
of the Proclamation to Mr. Joseph Williamson, one of the
highest living authorities on history pertaining to the history of
Maine. In due time received from Mr. Williamson the following
statement: —

"An examination of all the historical works bearing upon Maine
history during the administration of President Duxbury, and the Rev. Dr.
John Davis of York, satisfies me that the interesting fast and
Proclamation of 1681 has never appeared in print. As far as any
subject of public interest, following the trials and executions of Massachusetts,
came under the cognizance of these magistrates, and the court
over which they presided, I do not find any allusion to this official

This is wholly in the handwriting of John Davis.
Being extract from the York Court Records is of interest to this

RECEIVED IN THE LIBRARY OF YORK JUNE 29TH: 1682 A. M.
At the Court House in York on Thursday being the second day after the
fasting day.

THE HONORABLE AND SIRVLENTY OF CIVIL MASTERS
AND OTHERS IN THE PROVINCE OF NEW ENGLAND,
IN CONVENTION AS A PROVINCE, IN THE CITY OF BOSTON,
A.D. 1682. — WHEREAS, the Honorable and Sirvlenty of
the Province of New England, in Convention at Boston,
on the 21st day of June last, did appoint and declare, that
the 22nd day of June next, should be observed as a day of
thanksgiving, throughout the Province, for the greatt things
which the Lord hath hearken to done for us; — Now therefore be it
known, that the said 22nd day of June next, shall be observed as
a day of thanksgiving, throughout the Province, for the greatt things
which the Lord hath hearken to done for us; — And that no man
may be required to work on that day, except in case of an
急事 (Emergency). — And that all Ministers and People, in
case of an急事 (Emergency), may be required to be present at their Meet^t & Councill,

This extract is from the original manuscript, of Alfred,
Maine, to the New Haven Historical Society, in the original register for January,

Province of Maine in Newburgh, 27th of December
1681.

Now, as all of us being sensible of the goodness of God in remarkable
Mercy, towards his People in y' Wiles & Adversities, in the dispensation of
Judgment, wh^t we haue had experience of, particularly
Time of y^t late brought, we did gratefully inclaine
his Ear, to y^t Prayer of his People, in sending downe
seasonable Showers of Blessing from Heaven, so as y^t
the Harrit this yearre, haue not wholly failed, as we
were cause to feare, it might haue done, being also
sensible of y^t derive favours as yett continued to us
in Respect of our Liberties, both Civil, & Sacramental,
Publick Peace, & Health, &c. God hath y^t given us
blessed y^t land with y^t shewfullness for such a
valuablie: Mercies as y^t may still to enjoy them.

Therefore, By Advice of y^t Honored President
of this Province.

I do appoynt y^t 21st of this instant Month Decemb^r
to be observed, as a day of publick Thanksgiving,
throughout this Province, & do hereby prohibit
all servile labore one y^t day, Exhorting all both
Ministers, & People, solemnly to Pray y^t Lord, for the
greatt thing, wh^t he hath hearken to done for us.
So be it done.

paper.¹ . . . I regret that so little concerning Deputy-President Davis, who issued it, can be found."² Mr. Williamson added that "the Gorges Charter is broad enough to authorize such a Proclamation . . . and to enforce its observance."

1874, xxviii. 86. An examination of Mr. Baxter's copy of the York Court Records failed to reveal this entry. It should be noted, however, that the lack of chronological sequence in the entries in these Records may account for the inability of my correspondent to secure a citation of the volume and page where this Order appears.

The first printed broadside of a Thanksgiving Proclamation in Massachusetts appeared in June, 1676. The only known copy is in the Library of the Massachusetts Historical Society. It was reproduced by Dr. Love in his Fast and Thanksgiving Days of New England (facing p. 200).

¹ The Rev. Henry Otis Thayer, who made for me more than one examination of Mr. Baxter's indexed copy of the York Court Records (1686-1886), could discover no reference whatever to the Proclamation in the text, or to the event to which it relates, but he found the following Orders for the issue of two other Proclamations, — one for a Fast, the other for a Day of Thanksgiving — both during the administration of John Davis, to whose influence or suggestion it is not improbable that these State Papers owe their origin: —

I.

"Considering the many frowneing providences of god w^t daily hang over o^r heads as signall tokenes of gods great displeasure the certen afflictions of o^r sias y^t have turned his smiles into frowns — upon us — for diverting w^r/of & for y^t obtayninge of his wanted kindness If it bee his blessed Will Its y^tfore ordered by this Court y^t bee a day of Solemne humiliation kept throughout y^t Province upon the 3d Wednesday being the eighteenth day of May next Inswyng w^t all Ministers & such who feare y^t Lord are required to observe, & all other p^r/sons are prohibited from doing any servile labour upon that day as they will avoyd the Courts displeasure." (Court of Pleas held at York, 6 April, 1681, iv. 84).

II.

"Day of thanks giving
W^r/as this Court is Informed that the life of his Majesty hath been in great Hazard made by some disaffected p^rsons against his Majestys Royall person and Dignity — and some other additionall farr^{es}: of privileges and peace yet Contined to us.

These things Considered, this Court Judgeth meets to appoynt a soleme day of thanksgiving throughout the province to bee kept by all his Majestys good subjects — the Inhabitants y^t/of upon the last Wednesday of this Instant October, who are hereby prohibited from all servile labour on y^t day w^t is to bee set apart and Devoted wholly to render praynes unto god for his great goodness & mercys towards us therein." (Court of Sessions held at Wells, 9 October, 1683, iv. 297, 298.)

In connection with this Proclamation we find the following entry, which

² A very brief sketch of Davis, filling less than a dozen lines, is in William Durkee Williamson's History of the State of Maine, i. 671.

In 1622, Sir Ferdinando Gorges and John Mason obtained from the Plymouth Company a grant of all the territory between the Merrimac and Kennebec rivers.¹ The following year they planted a Colony which occupied both sides of the Piscataqua; and in 1630 the town of York—at first called Agamenticus, and later Gorgesana—was founded.² In 1639, after the surrender of the Plymouth Charter to Charles I., Gorges secured a confirmation of his grant, with more ample powers of government than had ever before been conferred upon a subject. The name which the State now bears first appeared in this Charter,³ which required its adoption.

The government of Gorges, which was but little less than an

suggests the possibility of some public feeling of disfavor which caused the postponement of this public Thanksgiving for nearly a year.

*"An Order about a day of
thanksgiving—"*

This Court ordereth y^e y^r day of thanksgiving formerly appoynted by authority & suspended upon some mature Considerations is now by y^r Court determined to be kept in Yorke, Kittery & Wells upon the first Wednesday in Sept^r next Insewing according to the former order." (Court of Sessions held at Wells, 30 November, 1662, iv. 302.)

I am indebted to Mr. James Phineas Baxter for permission to consult this valuable manuscript, and throughout this paper my citations by volume and page from these Records are from Mr. Baxter's copy.

The Fifth Volume of York Deeds, Part II. of which is devoted to a transcript of a later portion of the Court Records of the Province, contains the following entries which are of present interest:—

At a Court of Pleas, held at York, 25 February, 1690-91,—the last Court which John Davis is known to have attended as Deputy-President,—

"A Day of publike humiliation appoynted to be kept the third Wednesday in March next & all servile labours is forbidden on that Day" (p. 9).

At a Court of Sessions, held at York, 6 October, 1691, shortly after Davis's death,—

"It is ordered that there be a Day of publike thanksgiving kept on the fift Day of November next & all servile Werks on that Day is hereby prohibited" (p. 13).

¹ Palfrey's History of New England, i. 205, 207, note, 400, note, and 402, note.

² See the Petition of Edward Godfrey, the founder of York, to the General Court of Massachusetts, in Massachusetts Archives, iii. 235. The document is not dated, but the Order thereon, signed by Edward Rawson, bears date "30 october' 54."

³ The full text of this document is in Sullivan's History of the District of Maine, pp. 207-408, and Hazard's State Papers, i. 442. Cf. Palfrey's History of New England, i. 402, note 1.

absolute sovereignty, continued till 22 November, 1652, when Massachusetts assumed jurisdiction over the Province. On 6 May, 1677, Gorges's heirs, for £1250, sold all their rights to the Governor and Company of the Massachusetts Bay, who thus became Lord Proprietor of Maine.¹ The question at once arose—How shall the Province be governed? The answer was obvious: It must not be governed as a constituent part of Massachusetts, but according to the provisions of the Gorges Charter.

"It was determined, therefore, by the General Court, in February, 1679-80, to assume the royal charter granted to Sir Ferdinando Gorges; and in conformity with its provisions, to frame a civil administration over the Province. For this purpose, the general oversight and direction of its affairs were, by a legislative ordinance, committed to the Governor and Board of Colony Assistants. The government they established, was this—to have a *Provincial President*, chosen by them from year to year, and two legislative branches;—the upper one was to be a *Standing Council* of eight members, and the other to be a popular delegation, consisting of *deputies* chosen by towns as in Massachusetts. The Council, who were to be appointed by the Board of Assistants, and continue in office during their pleasure, were to be the judges of a Supreme Court, and magistrates through the Province. The legislative body was to meet at least once in every year. . . . The provincial charter itself was generally acknowledged to be excellent;—containing more privileges, and less restrictions, than any other of similar character, which had received the royal signature."²

Under the new régime, the freeholders of the Province met at York, on the seventeenth of March, 1679-80,³ when proclamation was made of the action of the Governor and Assistants of the Massachusetts Bay,—among other things, of the appointment of Thomas Danforth as President.⁴ Warrants were issued for the

¹ Palfrey's History of New England, iii. 312 and notes, 300-402 and notes.

² Williamson's History of the State of Maine, i. 558, 562.

³ York Court Records, iii. 383. Cf. York Deeds, iii. (Preface) 9, note 5.

⁴ Massachusetts Colony Records, i. 288; York Court Records, iii. 383. Danforth held the office until the arrival of the Second Charter, in 1682, except during the administrations of Dudley and Andros. For notices of Thomas Danforth, see New England Historical and Genealogical Register for 1854, vii. 815-821; Williamson's History of the State of Maine, i. 678; Palfrey's History of New England, ii. 514; iii. *passim*; and Paige's History of Cambridge, p. 530.

choice of deputies to the General Assembly which convened at York on the thirtieth of March.¹ Major Bryan Pendleton was the first Deputy-President, and as such, and in the same year, he signed a petition to the King "for aid in rebuilding the towns wasted and desolate" in consequence of the late Indian War. Pendleton was also senior member of the Standing Council first appointed,² and held both offices at the time of his death in 1681.³

John Davis of York, also a member of the first Standing Council, and a member of that Board until his death, succeeded Pendleton in the Deputy-Presidency; and Williamson says that they appear to have been the only incumbents of this office,⁴ which, by reason of Danforth's residence in Cambridge, became one of much importance. Davis held it, probably, until his death, in 1691, and certainly until the twenty-fifth of February, 1690-91, except during the time when Dudley and Andros ruled New England. Captain Francis Hooke also held the office of Deputy-President for a short time, as I shall presently show, but how soon after 25 February, 1690-91 his term began does not appear.⁵

¹ York Court Records, iii. 284.

² Williamson's History of the State of Maine, i. 565.

³ *Ibid.* i. 563, 564, 636. His will, dated at Portsmouth, New Hampshire, 9 August, 1677, was proved 5 April, 1681. (Maine Wills, pp. 59-61; and York Deeds, v. (Part I.) 8).

It is a curious fact that although Pendleton was the first incumbent of this office, and as such presided at the Courts held at Kittery, in April, and at Wells, in June, 1680 (York Court Records, iv. 50, 203), Davis is designated as Deputy-President in the List of persons "choosen & Deputed" by the authorities of the Bay to constitute the "Court & Counsell" which were to administer the Provinces during the first year. Pendleton's name follows that of Davis,—apparently as senior member of the Standing Council. The Record proceeds:—

"These several Gentlemen . . . are Commissioned for the yeare Innewing untill other bee by them choosen & sworne in there roome & stord who have all takes y' oaths of Allegiance to his Majestie & their oaths as Magistrat & Just^e of the peo: before the Honourable Thomas Danforth, pres^t." (York Court Records, under date of 17 March 1679-80, iii. 383.)

Davis was elected to the Deputy-Presidency at a second election at York, held 20 June, 1681. (*Ibid.* iii. 397.)

⁴ Williamson's History of the State of Maine, i. 556, note, 671.

⁵ Nowhere do I find a record of Hooke's appointment or election to this office, but that he held it there can be no doubt. See York Deeds, v. (Part L) 72, (Part II.) 11, 12.

The printed accounts of John Davis are extremely brief, but I have collected from various sources the following facts concerning him. His ancestry, and the dates of his own and his children's birth, of his marriage, and of his death, do not appear. Probably the Town and Church Records, which perished when the town was destroyed by the Indians on the twenty-fifth of January, 1691-92,¹ would have supplied, in part, these deficiencies. Fortunately, a Deposition² is preserved in which Davis states his age. It is dated 30 May, 1688. In it he gives testimony concerning William Hilton, father and son, and the former's residence in York, and describes himself as "Majo^r John Daues, aged 70 years, or yabouts." This fixes the date of his birth as in the neighborhood of 1618.

Savage locates John Davis at York as early as 1650, but, apparently, knows nothing of his antecedents. I have recently found a document which may throw some light upon this question. In 1679, John Davis and Samuel Sayward, both of York, executed an instrument³ under their appointment, 5 April, 1675, by John Knowlton of Ipswich, to sell his house in York. In Felt's History of Ipswich (pp. 11, 12) the names of John Davis and John Knowlton appear, in 1680, in the List of First Settlers. John Knowlton's will,⁴ made 29 November, 1658, proved 28 March, 1654, mentions, among others, his brother William and son John. The name of the son John, who gave the Power of Attorney,⁵ appears in the List of men impressed for the Narragansett expedition, 30 November, 1675.⁶ He was admitted a Freeman 18 October, 1680, at

¹ Belknap's History of New Hampshire (edition of 1784), i. 284; and 1 Massachusetts Historical Collections, iii. 8.

² York Deeds, iii. 125.

³ York Deeds, iii. 56,—two instruments. Knowlton's Power of Attorney to Davis and Sayward, in the form of a personal letter, is recorded (*Ibid.*) with this instrument. It is historically interesting, and reveals his whilom purpose to remove from Ipswich to York and its subsequent abandonment; and the fact that he had built a house in York on land given him by his much respected friend Captain John Davis "vpon my settleing there." He adds, "w^t Cap^t Davess his Accep^t Cometh to I purpose to give in w^t he comes to this Town,"—i. e. Ipswich. Cf. post, p. 174.

⁴ Ipswich Court Records, i. 188 (original); i. 280, 281 (copy). These Records are in the Essex Registry of Deeds, at Salem.

⁵ Felt's History of Ipswich, Essex, and Hamilton, p. 222.

which time he was living in Wenham;¹ and the Ipswich Town Records give the date of his death as 8 October, 1684.²

The discovery of this instrument led me to make a personal examination of the manuscript Records of the Town of Ipswich, which show that John Davis and John Knowlton (Senior) were Commoners in Ipswich on "the last day of the last month; 1641" (p. 99); that John Davis kept the cow herd on the North side of the river, in 1642 and 1643 (pp. 100, 101, 107, 108); and that in December, 1648, he and John Knowlton were among the subscribers to the annual stipend to be given to Major Daniel Denison "while he continued to be our Leader" (pp. 149, 150). About the same time (8 February, 1647-48) "John Davis of Jubaque³ within the bounds of Ipswich," shoemaker, for £4.15.00, sold to Daniel Ringe of Ipswich, fisherman, a six-acre lot at Heartbreak Hill in Ipswich, bounded: westerly by land of William Knowlton,—the uncle of John Knowlton (Junior); easterly by land of Humphrey Griffin and the widow Woode; northerly by land of Simon Thompson; and the lower or South end by the "highwaye leading from labor in vain bridge to the toun of Ipswich."⁴ Under date

¹ Massachusetts Colony Records, v. 540; and New England Historical and Genealogical Register for 1849, iii. 246.

² The Essex Probate Files (No. 16,075) contain "An Inventory of the estate of Jr: Knowlton of Ipswich: deceased Octob'r 8th 84." which foots £13.08.9; and a List of Debts due from the estate amounting to £101.18.00, which includes this item: "good wife Davis £5.00.00."

³ The parish of Chebacco (now the town of Essex) is here referred to.

⁴ Ipswich Court Records (in Essex Registry of Deeds), i. 50 (original); i. 190-192 (copy). No wife joins in this deed, which is signed by a mark. There is a brief notice of Davis in the Hammatt Papers (1854), p. 70, but Hammatt appears to have known nothing of his antecedents or of his career after 1648.

There is also in the Ipswich Court Records (i. 166, 167, original; i. 461-463, copy) another deed, dated 10 April, 1655, from John Davis of Ipswich, whose occupation is not mentioned, "with the consent of my wife," Alice, who also joins, to Daniel Ringe of thirty-five acres of land, in two parcels, with the buildings thereon, in Ipswich. Both of these grantors sign by a mark. This John Davis, doubtless, was identical with the grantor in the deed of 8 February, 1647-48, but I believe that the conveyance of 1655 was made after Davis had taken up his abode in York. It is by no means improbable that he left his wife in Ipswich until he could establish himself in his new home, and that about the time of the sale of this property to Ringe she had

of 30 December, 1642, I found in the Town Records the following mandate: —

"It is ordered that Mr. Firman and Thos Scott, the late Constables, shall forthwith pay to Jo: Davis his for goeing with the Deputy Governar¹ to Cape Ann - 0 - 4 - 0" (p. 105).

The last reference that I found is in the following entry: —

" 26th of the 10th in 51.

John Davis is granted to have halfe an acre of ground adjoyning to his own Land, in consideration of the highway leading to Chebacco laid out through his Land" (p. 169).

Neither John Davis nor his family—if he had any during his residence in Ipswich—appears in the vital records of the Town by so much as a single entry.

In less than twelve months after the permanent disappearance of John Davis's name from the Ipswich Town Records we find a man of the same name taking the oath of a Freeman of the Massachusetts Bay Colony at Agamenticus,²—on the twenty-second of

joined her husband. That Capt. John Davis of York was in the habit of visiting Ipswich, there would seem to be no doubt. (Cf. ante p. 173, note 3.) I find no other conveyances by John Davis of Ipswich, in either the Ipswich Court Records, the old Norfolk Records, or the Essex Deeds.

¹ John Endicott. While a resident of Ipswich, John Davis, as we have seen, lived at Chebacco and held land north of the river, at Heartbreak Hill from the summit of which, on a clear day, may be seen the top of Mount Agamenticus. Our associate, Mr. Abner C. Goodell, Jr., calls my attention to the fact that from this neighborhood it is possible to proceed to Gloucester (Cape Ann) by way of Annisquam, and that, in all probability, Endicott took this route, in 1642, when accompanied by Davis, instead of going by way of Cape Ann side (*i.e.* Beverly and Manchester) along shore all the way.

² A comparison of the List of early inhabitants of Ipswich in Felt's History of the Town (pp. 10-13) with the Lists of Freemen sworn at Agamenticus, Wells, Saco and Cape Porpoise, in 1652 and 1653, reveals the fact that the names of John Baker, John Davis, Joseph Emerson, John Saunders, and John West appear in both, and suggests the probability that these men, or their sons of the same names, removed permanently—or temporarily, as did John Knowlton—from Ipswich to the Province of Maine. Emerson, we know, was in Wells as early as 4 July, 1653, and minister of the First Church in Wells from 1664 till 1667; and Felt says that he preached in York 1648 and 1653. (Massachusetts Colony Records, iv. (Part I.) 129, 156, 162, 164, (Part II.) 34; Bourne's History of Wells and Kennebunk, Maine, pp. 26, 106, 104; and

November, 1652. At the same time the oath was taken by another

Felt's Ecclesiastical History of New England, i. 548; ii. 118, 320, 389. See also New England Historical and Genealogical Register for 1849, iii. 193; and Savage's Genealogical Dictionary of New England, i. 96; ii. 16, 118; iii. 614; iv. 20, 21, 457, 488.)

The York Court Records (i. 137, 138) show that John Davis witnessed a deed of land from John Lander and John Billin of "Pascataquack," to Joseph Miles, 26 February, 1639-40; and (i. 180) that certain claims of Francis Champernowne v. John Tomson and of John Tomson v. Thomas Withers, for £40 and £50, respectively, were referred to Nicholas Shapleigh, William Hilton, John Alcock and John Davis, as arbitrators, 25 October, 1650. John Davis also witnessed a deed from George Cleaves and Richard Tucker of Casco Bay to John Moses "now of Piscataq River," 6 April, 1648 (York Deeds, i. (Part I) 109). These entries indicate that Davis was at York before settling at Ipswich, and that he returned, temporarily, to York before making it his permanent place of abode about 1652. The second entry also shows that the friendship between Davis and Champernowne, which ended only with the latter's death, extended over nearly forty years. Cf. post, p. 183.

The Index of Volumes I.-IX. of the First Series of the Collections of the Maine Historical Society (p. 72) erroneously calls the Deputy-President son of Isaac Davis of Stroedwater (Falmouth, now Deering), Maine, whose eldest son John, born in 1600, was living, with his younger brother Samuel, in Gloucester, Massachusetts, in 1733 (1 Collections of the Maine Historical Society, i. (edition of 1863) 309; and Babson's History of the Town of Gloucester, Cape Ann, p. 235). Babson, in another place (*Ibid.* p. 333), says:—

"In 1713, a John Davis, with his wife and family, from Ipswich, moved into town. He may have been the person of the same name, son of Isaac of Falmouth, who, in 1734, was living in Gloucester, about seventy-four years old [hence born in 1660]; and the 'old Mr. John Davis' of Sandy Bay, who, in 1748 and for several preceding years, received assistance from the town."

Babson also refers (p. 75) to a John Davis of an earlier generation who "bought of Richard Winslow, in 1656, his house, barn, orchard and land . . . [and] after a residence of several years in town . . . removed to Ipswich." Whence he came, Babson does not record.

It will be remembered, that the names of Davis, Knowlton, and Sargent, all of which are found early in the County of York, were early names at Cape Ann as well as in Ipswich, and that on the back side of the Cape the Ipswich and Gloucester (Squam and Sandy Bay) families were neighbors; the probability of kinship, therefore, is very strong. As stated in the text, John Davis of Ipswich attended the Deputy-Governor to Cape Ann, in 1642, but on what business the record fails to show. That there was some connection between the Davis families of Ipswich, Gloucester, York and Falmouth there can be no doubt, but precisely what it was can be determined, probably, only by a critical collection of many original public records in several of the towns and counties of Maine and Massachusetts. Cf. Suffolk Court Files (1733-1755), Nos. 55,127, 57,100, 49,942, 50,317, 50,479 and 74,333.

John Davis,¹ and by Nicholas Davis,² formerly of Charlestown, who was afterward, and for many years, closely and constantly

¹ This man is not known to have been of kin to the Executive; and his age forbids the assumption that he was his son. I believe that he was identical with John Davis of Saco, and that he resided, at different times, in Saco, Agamenticus and Cape Porpoise, and in Portsmouth, New Hampshire. In this view I appear to be confirmed by Mr. James Phinney Baxter,—in his note on John Davis of Saco, on page 329 of The Trellawney Papers, where he states that John of Saco was admitted Freeman in 1652. If that be true, he must have been then resident at York and have been admitted simultaneously with the future Deputy-President of the Province, as only two persons of that name were admitted to citizenship at that time or before 1660. Baxter, quoting Folsom, believes John Davis of Saco to have been a smith, because of a contemporary reference to a forge belonging to him. Confirmation of this belief and of my own opinion as to the identity of John Davis of Saco and the second John Davis of York is found in three documents recorded with the York Deeds.

(i) The first instrument is a conveyance by which "John Davis, Sen^r late of Capeporpoise [Arundel, now Kennebunkport], in y^e County of York, Blacksmith," for £26.10. sells, "with y^e Consent of Katherine my wife & my Son John Davis," his half of certain marsh lands at Cape Porpoise and land at Batson's Neck. The deed is dated at Portsmouth, 10 January, 1675-76. (York Deeds, viii. 198, 199.)

(ii) The second paper is given in full, as follows:—

"March 10th 1679:

whereas there was some trouble like to arise between Major Clarke & Mr. Rishworth, by reason of John Danes the Smynthe denying the Sale of a little Poynt of Land on Mr. Gorges Crickle, Where the Saw Mills standeth, & vpon Consideration to Prevent any further trouble, Wee the Selectmen of the Town of Yorke, do Confirm the said Parcell of Land to Mr. Edw: Rishworth, paided y^e bee no former Grant to any other Person

Vera Copia of this Confirmation
or grant transcribed & with
original Compared this
15th day of March 1683;

JOHN DAVIS
RICH'D BAXTER
JOHN TWISDEN

"³ Edw: Rishworth Recor:" (*Ibid.* iii. 120.)

(iii) On the thirty-first of March, 1699, a man of this name, styling himself of Portsmouth, New Hampshire, "smith," sold to James Plaisted of York, who was its Town Clerk, one of its Selectmen, and, in 1701, its Representative to the General Court in Boston,—

"all y^e Right, title, or Interest I have, ever had, or ought to have either by Town grant, Purchase, Possession, by privilege of Landing place, Hay Yard or by any other way or

¹ See Wyman's Genealogies and Estates of Charlestown, i. 275; Maine Willa, 5, 6; post, p. 183; and Savage's Genealogical Dictionary of New England, ii. 20, 302; iii. 410.

associated with that John Davis who became the Deputy-President of the Province of Maine.

means whatever, To a certain tract of land lying in York afores^d in the place called y^r New Mill creek between y^r Land of Thomas Moulton & the land of M^r Edward Rich-
worth be it more or less as by any means may be made to Appear." (*Ibid.* iv. 184.)

In the acknowledgment, the grantor is described as "Docter John Davis." The words which are here italicised may have been inserted in consequence of the action of the Selectmen of York, 10 March, 1679, quoted above. (*Ibid.* vi. 82, 182; and *Province Laws, Massachusetts*, vii. 284.)

Baxter says (*Trelawny Papers*, p. 329, note) that John Davis of Saco lived near the Falls, and that his name is perpetuated in a brook near by. He was of the Jury of Trials, in 1650, and later of the Grand Jury; and in 1653, he had grant of a saw mill. These facts show the impossibility of his having been son of Isaac Davis of Stroodwater, as has been also stated, since John Davis, son of Isaac of Stroodwater, was not born until 1600. (1 *Collections of the Maine Historical Society*, i. (edition of 1865) 309.) Cf. *ante*, p. 176, note.

On the thirteenth of August, 1668, John Davis, aged forty-one years (consequently born about 1627), deposed, before Bryan Pendleton, as to his own action, pursuant to Pendleton's order, in the Saco Meeting-house, "after evening exercise" on the "Sabbath-day night next after Yorke Court for the Massachusetts," in warning "the military men in our towne" to assemble in the training-place on the following day to hear and see the orders that had come from Boston concerning the future government of the Province of Maine, and also as to the action of Major William Phillips in challenging the authority of Major Pendleton who had been appointed to supersede him in office. (*Massachusetts Archives*, evi. 193-198, where also may be read similar Depositions by Robert Booth aged 66, Richard Hitchcock aged 60, John Sergeant aged "near 36," and Roger Hill aged 33,—all sworn to at Saco before Pendleton, 13 August, 1668—and other documents in this case, which see.) A long letter concerning this controversy between the appointees of the King's Commissioners and the authorities of the Bay, written by Bryan Pendleton from Winter Harbor (Saco), 21 August, 1668, to Major General Leverett, is in *Ibid.* evi. 196.

John Davis of Saco, beyond question, was a man of scandalous life. The York Court Records (i. 271), under date of 28 June, 1655, contain proceedings involving the honor of John Davis of Winter Harbor (Saco) and Mary, wife of Jonas Clay (cf. 1 *Collections of the Maine Historical Society*, i. (edition of 1865) 372); and 28 June, 1652, having been elected a Deputy to the General Assembly, he was "disaccepted as a scandalous person." (York Court Records, iv. 16.)

Mr. William P. Upham calls my attention to the fact, that in the Suffolk Court Files (No. 26,163) is a Deposition by John Davis, aged about 52 years, as to his "father Black" and Captain Caleb Preble talking about a suit with "Mr. Woodbridge . . . about twenty-two years ago." The paper is

From what is shown by the records and documents which have here been cited, it does not seem unreasonable to infer, that the John Davis who disappears from the Ipswich Records in or about 1651, is identical with that John Davis of York who signed the Thanksgiving Proclamation which is before us.

Deputy-President John Davis is described by Williamson as "a man of very considerable abilities, natural and acquired"; and he was held in high esteem by his contemporaries, early (1652) enjoying the prefix of respect. In 1652, he actively advocated the union of Maine and Massachusetts. He was long identified with military affairs and had been in command of the militia during the Indian wars, in which he "had distinguished himself as a brave and discreet soldier."¹ He married Mary Puddington, the widow of George Puddington² of York. She was "licensed to sell wine"

without date and appears to have been written subsequent to 1700. It is not improbable that the Deponent was the son of John Davis the smith. Cf. *Ibid.* (1736-1755), Nos. 41,843, 43,964, 43,994 and 74,333.

In the Massachusetts Archives (xxxviii. 148, 149) are two Depositions by John Davis in which he describes himself as "aged about thirtie four years." As they were sworn to, before Bryan Pendleton, 18 April, 1654, it would appear that the Deponent was born in or about 1620. Whether he was Deputy-President John Davis of York, who, according to another Deposition, appears to have been born in 1613, or John Davis of Saco, from whose Deposition, in 1668, it appears that he was born in 1627,—or, possibly, a third, and hitherto unknown, John Davis, I am unable to determine. See *The Baxter Manuscripts* (2 *Collections of the Maine Historical Society*, iv. 108.)

¹ Williamson's *History of the State of Maine*, i. 566, 671.

² George Puddington and three others were chosen, 19 June, 1640, by the inhabitants of Agamenticus, Deputies to appear and act for them at the General Assembly, on summons by Richard Vines, Steward to Sir Ferdinando Gorges. Puddington attended the first General Assembly which convened at Saco, 25 June, 1640 (York Court Records, i. 65; 1 *Maine Historical Collections*, i. (edition of 1865) 367; and 1 *Massachusetts Historical Collections*, i. 101.) On the sixth of August following, he was indicted by the whole bench for "speaking words:—we hold that the power of our combination is stronger than the power of the King." (York Court Records, i. 91.) He was also named one of the first Board of Aldermen of the city of Goréeana in the First Charter granted by Gorges, 10 April, 1641 (Hazard's *State Papers*, i. 470-474.) George Puddington appears to have been a son of Robert Puddington, the elder, of Tiverton, in Devonshire, whose will, "expressed" 10 February, 1630-31, is recorded in the Prerogative Court, Canterbury, St. John, quire 49. George Puddington, the son, renounced the executorship 26 April, 1651, and administration was granted, 16 May following, to Anne, the relict, and George Pud-

in 1649. How soon after that date she married Davis does not appear, but on the fifteenth of March, 1661-62, she joined with him in two deeds,¹ describing herself as his wife and formerly the wife of Puddington, who was at York as early as 1640. Davis had two daughters,—Mary,² who married Peter

Puddington the elder,—a brother of the deceased (Putnam's *Historical Magazine* for 1893, New Series, vii. 47-53, 140-144, 191-196.) Puddington's wife had borne an unenviable reputation, and was indicted by the whole bench, 8 September, 1640, for impropriety (which she subsequently confessed) with George Burdett, "who had fled from Exeter and had resided at Accomonctown in the character of a preacher." (1 *Maine Historical Collections*, i. (edition of 1866) 364-366; and Sullivan's *History of the District of Maine*, p. 309. As to Burdett and his evil deeds, see also *York Deeds*, iii. (*Preface*) 8; Winthrop's *History of New England* (edition of 1858), pp. 11, 12, and notes; Belknap's *History of New Hampshire* (edition of 1784), i. 33-36; and Williamson's *History of the State of Maine*, i. 270, 271.) Puddington was living as late as 3 July, 1647, when he made Deposition (*York Deeds*, i. (Part II.) 18.) His will, dated 23 June, 1647, for some unaccountable reason, was not recorded till 18 January, 1603-04, when it was entered with *Ibid. v.* (Part L) 120, 121. It is also printed in *Maine Wills*, pp. 99-101. In it he mentions his wife Mary as the mother of his five children,—all under twenty-one years of age,—and names her as executrix; gives to elder son John and younger son Elias, land, etc., "where I now dwell in Gorgeana"; to eldest daughter Mary, second daughter Frances, and youngest daughter Rebecca, other property; mentions brother, Robert Puddington, and appoints him, with Mr. Edward Johnson, Mr. Abraham Preble, and Mr. John Alcock, supervisor of his estate.

A remainder of Puddington and his wife which proves that his death occurred between 3 July, 1647, and 5 June, 1649, is found in a List of Debts owing to the estate of Isaac Gross of Boston, brewer, in 1649:—

"Widowe Puddington, of Aggamentown, for moneys owing by her husband before his deceas, 22 lb." (*New England Historical and Genealogical Register* for 1883, vii. 228.)

This paper has since disappeared from the Suffolk Probate Files.

Of John Puddington, or Purrington, as the record reads, we find that 2 November, 1674, he executed a deed, "with the consent of his Mother Mrs Mary Davens," of half an acre of land in York to his "loving brother in law, John Penwill," mariner. (*York Deeds*, ii. 160.)

¹ *York Deeds*, i. 119,—two instruments.

² The will of Mary Weare, made 21 January, 1718-19, and proved 7 April, 1719, is printed in *Maine Wills*, pp. 213, 214. Administration on her husband's estate had been granted to her at a Court of Sessions held at York, 1 November, 1693, when she gave Bond in £462 (*York Deeds*, v. (Part II.) 15), and swore to an Inventory of the estate of her husband, "lately deceased," dated at York 18 April, 1692, amounting to £231.18.0. (*Ibid. v.* (Part L) 80.)

Weare, Treasurer of the County of York,¹ and Sarah, the wife of John Penwill, of York, mariner, but I can learn of no other children.

On Saturday, the twentieth of November, 1652, Mr. Nicholas Davis and Mr. John Davis were required by the Massachusetts Commissioners to summon the inhabitants of Gorgeana (York) to meet them at the house of the first-named citizen on the following Monday morning, between seven and eight o'clock, and submit themselves to the government of the Colony of the Bay.² The two Davises, and another John Davis, as already mentioned, submitted with the other inhabitants; and on the same day that John Davis who was destined to become Deputy-President of the Province of Maine, was licensed to keep an ordinary at York³ and was also appointed Sergeant.⁴ In 1658 he was one of the Commissioners

On the twenty-ninth of May, 1704, the Probate Court granted—

"Administration to Mrs. Mary Weare, of York, on the estate of her brother-in-law Mr. Joseph Penwell, of York, deceased, intestate, the relict widow of sd Penwell being non compes mentis." (*York Probate Records*, i. 92.)

See *Maine Historical and Genealogical Recorder*, iii. 133; and *York Deeds*, ii. 160, 164.

¹ Peter Weare was also Town Clerk and a Selectman of York, Recorder of the County and, later, an Associate. In 1660, he was a Deputy to the General Court, at Boston, from Kittery, although a resident of York. (*York Deeds*, ii. (*Preface*) 7, 8, which contain a sketch of Weare; and *Massachusetts Colony Records*, iv. (Part I.) 449.)

² *Massachusetts Colony Records*, iv. (Part L) 128-132.

³ This fact was animadverted upon many years after by Dr. Benjamin Ballivant, an ardent supporter of the Andros régime, who suffered imprisonment at the uprising of the people on the eighteenth of April, 1689:—

"One Davis, a common Alehouse keeper, proposed to be Deputy President of the Province of Maine with the title of Major; the people refuse him obedience." (Ballivant's *Journal*, under date of 19 February, 1689-90, in *Public Record Office*, London, Board of Trade Papers, v. 82.)

I am indebted to Charles E. Banks, M.D., a descendant of the Deputy-President, for this extract. Cf. 1 *Proceedings of the Massachusetts Historical Society*, xvi. 103, 108.

⁴ 2 *Collections of the Maine Historical Society* (*The Baxter Manuscripts*), iv. 83, 84. Davis's promotion in the militia followed in due course. He was Ensign in 1654, Lieutenant in 1659, Captain in 1665, Sergeant-Major in 1680, and Major in 1688. (*York Court Records*; *Massachusetts Colony Records*; and *York Deeds*, iii. 125.)

to settle the bounds between York and Kittery.¹ He subsequently signed the Petition of the inhabitants of York, Wells, Saco, and Cape Porpoise to Cromwell, 12 August, 1656, praying to be continued under the government of Massachusetts;² and later, at the Restoration, he joined in a Petition to Charles II. praying for a government of their own.³ From 1658 till 1660 he was Marshal of the County of York.⁴ He had held the office, *pro tempore*, in 1657, during the absence in England of Henry Norton,⁵ who had been chosen to it 22 November, 1652.⁶ On the assumption of the government of the Province by the King's Commissioners, Sir Robert Carr addressed a warrant to Captain John Davis, 2 July, 1665, to summon his company to appear in arms, in the Training-field, on the following Tuesday morning, "there to attend further order."⁷

On the fifteenth of April, 1668, Edward Rishworth and Francis Champernowne issued a warrant to apprehend Peter Weare and Francis Raynes and to secure their papers. On the twenty-fourth of April, Weare wrote a letter to Captain William Waldron, soliciting his aid in securing his liberty. In it he alleges ill-treatment at the hands of the Marshal and Captain John Davis who enforced the process and took away a letter, addressed to Thomas Danforth and signed by many inhabitants of York, praying to be taken under the government of Massachusetts. Weare gives an account of what occurred at Davis's house, where, he says, Davis was guilty of "vsing very vnseuel Words & prbbrowes Langwig Calling him Base knaue & cripell Cur & wth a violent punch wth his fist threue him viallenty vpon y^e ground littell short of ye flare."⁸ It is

¹ Massachusetts Colony Records, iii. 402.

² 1 Collections of the Maine Historical Society, i. (edition of 1868) 392-395; 2 Collections of the Maine Historical Society (The Baxter Manuscripts), iv. 141; and Williamson's History of the State of Maine, i. 390, note.

³ 2 Collections of the Maine Historical Society (The Baxter Manuscripts), iv. 148. Many documents relating to the contest for jurisdiction in the Province of Maine are described in Fainsbury's Calendar of State Papers, Colonial Series, America and West Indies, *passim*.

⁴ York Court Records, i. 314, 348.

⁵ *Ibid.* i. 382. Davis took the oath of office on the third of October.

⁶ Massachusetts Colony Records, iv. (Part I.) 139.

⁷ *Ibid.* iv. (Part II.) 222.

⁸ 2 Collections of the Maine Historical Society (The Baxter Manuscripts), ii. 211-214. Our associate, Mr. Albert Matthews, calls my attention to a similar

interesting to note, that after this altercation the two men probably became reconciled, because, as we have seen, Weare subsequently married Davis's daughter Mary. In the will of Nicholas Davis of York, before mentioned, made 27 April, 1667, and recorded 17 August, 1670, he appoints "my Loueing frejnds Cap^t John Daves & Mr. Peter Wear" to be the overseers of his estate.¹ A similar expression of confidence in John Davis is found in the will of Francis Champernowne who, in 1686, included him among his "loving friends" who are named overseers under that instrument.²

In 1662, 1665, 1675, 1676, 1679, and, doubtless, in other years, John Davis was one of the Selectmen of York;³ and in his judicial capacity, as a Magistrate, he constantly held court at various places within the Province,⁴ in 1680 holding a Special Court of Admiralty,⁵ and in May, 1684, sitting at Wells as Chief Justice.⁶

In 1688 Davis had attained to the military rank of Major, and is so styled in a deed which he gave to James Freathy of York on the eighth of December of the following year.⁷ On the eighth of September, 1685, with Francis Hooke, also a member of the Standing Council of Maine, and Deputy-Governor Barefoot and three of the New Hampshire Council, he signed the Articles of

¹ episode, in 1688, described in New Hampshire Provincial Papers, i. 578-582, showing how violent men were in those days. The parties to it were Thomas Wiggin, Robert Mason, and Walter Barefoot. Wiggin threw Mason into the fire, from which he was rescued by Barefoot; whereupon Wiggin threw Barefoot (whose sister he had married) into the fire, but was pulled off by Mason.

² Maine Wills, pp. 5, 6.

³ *Ibid.* 121-122. Cf. *ante*, p. 176, note.

⁴ York Deeds, i. 130; ii. 74; iii. 120; and 2 Collections of the Maine Historical Society (The Baxter Manuscripts), iv. 360, 370. On the twenty-sixth of July, 1684, President Danforth executed a deed to Major John Davis, Mr. Edward Rishworth, Captain Job Alcock, and Lieutenant Abraham Preble, as Trustees, on behalf of the Inhabitants of the Town of York, confirming to them the grant of Sir Ferdinando Gorges. The existence of this deed was long doubted. It is printed, from a copy in the Society's Cabinet, in 2 Proceedings of the Massachusetts Historical Society, v. 433-435.

⁵ York Court Records, *passim*.

⁶ *Ibid.* iv. 222.

⁷ *Ibid.* iv. 163.

⁸ York Deeds, iv. 80. Mr. William P. Upham sends me a memorandum of a paper in the Suffolk Court Files (No. 1806). It is a copy, certified by William Pepperrell, Clerk, of a Grant to Capt. John Daves, dated 7 June, 1673, of fifty acres on the north-east side of Robert Sowdon's land, "being part of y^e ad Daves's former divident," signed by Edward Rishworth.

Peace agreed upon between the inhabitants of those Provinces and the Indians inhabiting them.¹

The date of John Davis's death has not been ascertained. He attended, officially, as Deputy-President, a Court of Pleas held at York 25 February, 1690-91.² At a Court of Sessions, held 2 June, 1691,³ and at a Court of Pleas, held at York, 1 July, 1691, "the Deputy-President" was in official attendance, although his name is not recorded, as was usually the case. At the Court held on the last-mentioned date, it was ordered that a Court of Sessions of the Peace should be held at York on the first Tuesday of October, and a Court of Pleas at the same place on the following day.⁴ At the Court of Sessions held at York 6 October, 1691, there were present, Captain Francis Hooke, "Deputy President,"⁵ Major Charles Frost, and Mr. Samuel Wheelwright; and Administration was granted to Mary Davis upon the estate of her husband, Major John Davis,⁶ late of York. At the same time she made oath to an Inventory of the estate amounting to £844.19.0, and gave Bond in £689.18.0.⁷

The latest reference to John Davis that I have found is in the record of a "Memorandum" made 1 April, 1691, by Jane Withers, widow of Thomas Withers, which was witnessed by Davis and another, and sworn to ten years later (18 June, 1701) at Kittery.⁸ It thus appears that John Davis died between the first of April and the sixth of October, 1691.

The career of John Davis presents an interesting study in character. The York Court Records and the York Deeds are the principal sources of information concerning him that remain,—the Town and Church Records having perished. In middle life

¹ Belknap's History of New Hampshire (edition of 1784), i. Appendix xiv. pp. lxxix-lxxxii; and New Hampshire Provincial Papers, i. 588, 589.

² York Deeds, v. (Part II.) 8. ³ *Ibid.* v. (Part II.) 10.

⁴ *Ibid.* v. (Part II.) 11.

⁵ *Ibid.* v. (Part II.) 11, 12. Hooke also attended, in the same capacity, a Court of Pleas held at York on the following day; and the Inventory of Shabael Dummer's estate was sworn to by George Snell, at Kittery, 19 March, 1691-92, before Francis Hooke, Deputy-President, and John Wineoll, Justice of the Peace (*Ibid.* v. (Part I.) 72).

⁶ The spelling of Davis's name in the contemporary original records shows many curious variations.

⁷ York Deeds, v. (Part II.) 11.

⁸ *Ibid.* vi. 98.

his animal spirits appear to have been under slight control, and we read in the Court Records the evidence of baleful intemperance, not only in appetite, but in deportment and speech;¹ of his presentment (1658) "for selling beer by wine quart" (i. 248); of his "affronting the Court [in June, 1654] by giving unseemly speeches with his hatt on" (i. 268);² of his discharge from the office of Marshal in 1660 (i. 349); of his "rideing one Lord's day from Wells to York" (July, 1661) with Major Nicholas Shapleigh and others (i. 361); and of his presentment, with two others, "for neglect of y^r dutys to which they were bound by oath for not voateing for Gover: Deputy Gover: Mageistrates & officers for carrying on authority amongst us" (i. 404).

After 1670, however, the Records tell a very different story. Davis appears to have gained control of his temper and his appetites, and from that time until his death he rose constantly in the public esteem, of which he had always had a large share, notwithstanding his infirmities. As early as 1658, he appeared in Court, at York, as attorney for Edward Hutchinson, of Boston, in an action of debt (i. 308); in 1670 he was of a Committee, with Edward Rishworth and others, to locate the "meeting-house at the lower part of the river Pischatq;" (ii. 412, 418); at various times, between 1674 and 1679, he was a Commissioner to canvass the vote for public officers; in 1680 he was of a Commission which was ordered speedily to "repayre to y^r Eastward & settle the concerns thereof according to y^r best understanding of the premises" (iv. 218, 219); and on the twelfth of April, 1682, he was ordered by the Council to go, with three others, to Casco and settle matters respecting Fort Loyal³ (iv. 259).

¹ York Court Records, i. 268; ii. 40, 331, 386, 389, 409. While the evidence afforded by the entries here cited fully sustains the statement in the text, it has not seemed desirable to transfer to print the details of sanguinary altercations, ineptiety, and other offences for which Davis incurred heavy fines and penalties imposed by the Courts.

² It thus appears that Davis had early imbibed Quaker doctrines which at that time were causing the banishment of many Massachusetts families to the Eastward as well as to the South. It is possible that we have here the reason for his removal from Ipswich to York, especially when we remember that General Daniel Denison, the foremost citizen of Ipswich, was severe in his opinions and actions against the Quakers. See Publications of this Society, i. 127, 139; Plymouth Colony Records, x. 180, 181; and Felt's History of Ipswich, pp. 165, 234.

³ See Williamson's History of the State of Maine, i. 500, 510, 562.

These special services are noted to show the confidence reposed in Davis by his associates in authority. More interesting and suggestive are the references to him in connection with the inconspicuous and every-day matters which got into these ancient records. Serving upon all kinds of Juries, — not infrequently as Foreman, — he was also constantly employed as a Commissioner to lay out roads, to settle the boundaries of towns and of private estates, and to set off dower; as a referee in disputed matters, and as an appraiser of estates. He was often bondsman for administrators and executors, and an overseer of wills; and the records preserve ample evidence of his helpfulness to others having the care or administration of property. They also reveal his constant service to Town and County upon committees of every kind, dealing not only with great and important matters, but also with the most humble affairs of life.

As we take our leave of this faithful public servant, in the full tide of official honor and of the public confidence, we see that for more than twenty years, and until his death, he was a prominent figure in the Province, rendering valuable service in the field, as a Magistrate, and, in private life, as a public spirited citizen. Occupying the foremost place in business, in public affairs, and in the administration of justice, we find Courts, Councils, and Commissioners frequently convened at his house. Danforth was seldom present at any sitting of the Magistrates, but Davis was almost invariably in attendance, and was, in fact, the head of the Administration, as well as the most distinguished citizen of York.

The Hon. JEREMIAH SMITH of Cambridge, and Messrs. AUGUSTUS LOWELL of Brookline, JOHN ELIOT THAYER of Lancaster, and DENISON ROGERS SLADE of Newton were elected Resident Members.

FEBRUARY MEETING, 1898.

A STATED MEETING of the Society was held in the Hall of the American Academy of Arts and Sciences on Wednesday, 16 February, 1898, at three o'clock in the afternoon, the PRESIDENT in the chair.

After the Records of the January Meeting had been read and approved, the CORRESPONDING SECRETARY announced that since the last Stated Meeting letters had been received from the Hon. JEREMIAH SMITH, LL.D., and from Messrs. AUGUSTUS LOWELL, JOHN ELIOT THAYER, and DENISON ROGERS SLADE accepting Resident Membership.

The PRESIDENT, as Chairman of the Committee appointed to consider the subject of increasing the permanent Funds of the Society, reported that of the \$10,000 which they had proposed to raise, subscriptions amounting to \$9,460 had been already received.

President WHEELWRIGHT then said: —

I have to make another of those announcements of which there have been so many during the past year. Our associate, FRANCIS VERGNIES BALCH, died at his home in Jamaica Plain, on Friday, February fourth.

Mr. Balch was elected a Resident Member at the first Stated Meeting of the Society, 18 January, 1898. The engrossing nature of his professional engagements prevented his being a frequent attendant at our meetings, and did not allow him to take any conspicuous part in the Society's work. With that work, however, he deeply sympathized, and he was always ready to furnish to those who were more actively engaged in it than himself that counsel and assistance which his wide knowledge — especially of our local history, gained in the practice of his profession — enabled him to give.

We have always esteemed it a high honor to have inscribed on the Roll of our Members the name of one who was universally conceded to be the ablest conveyancer of the day in this city, and whose high personal character and modest private virtues

endeared him to all who knew him. My own personal acquaintance with Mr. Balch was so slight as to preclude me from saying more; but there are several gentlemen here present who knew him intimately, and who have expressed a wish to pay tribute to his memory at this time. I will call first upon Mr. Charles Sedgwick Rackemann, his associate in business.

Mr. RACKEMANN spoke as follows:—

The keynote of Mr. Balch's character was simplicity, and the story of his life, told in detail, would comprise a series of illustrations of the way in which he met every duty with courage and cheerfulness, and applied to its performance his simple methods of execution. He had the most unswerving devotion to the truth in all matters, great and small. He was so candid, and so conscious of his own rectitude, that by the very frankness and directness of his address he must often have disarmed those who sought to circumvent him, or to take advantage of his clients despite his efforts in their behalf. One constantly thought of him as essentially a man.—

"Whose armor is his honest thought,
And simple truth his utmost skill!"

In Mr. Balch's life there were five principal events: his college career, which developed points in his character that lasted always with steady firmness; his service in the army, which nearly deprived us of his after-life; his marriage; his connection with Mr. Sumner and his residence in Washington; and his final settlement in the pursuit of the law. In order to show how and why he succeeded in making something out of every one of these experiences, how he benefited by what he went through, how he helped others at every point, either by influence and example or by actual service, how he studied and worked, and "lived and loved," one must write a book.

In his own department of the law Mr. Balch was *facile princeps* among us, and he had, to a very remarkable extent, the acquaintance and respect of those members of the Bar whose work lay along other lines than his, as well as the admiration and love of his brother conveyancers. His power of work was extraordinary, and must have been derived largely from his father, of whom it is

related that when he was laboring over the fire insurance business, of which he was one of the pioneers, he not infrequently remained in his office all night, and took only such sleep as he could get in his chair. But of his attributes and attainments as a lawyer, due notice will be taken by a Committee of the Bar Association already chosen for that purpose.

Much has been said of Mr. Balch's modesty and his retiring manners; but even these traits could not conceal from those who saw him "upon a nearer view" the finer and stronger points of character of which they were but the outward accompaniments. We may confidently characterize Mr. Balch as lawyer, patriot, Christian gentleman. Could we wish for him, or for any one dear to us, a better designation, or the establishment of a nobler record than these words imply?

Remembering Mr. Balch's untiring industry, his deep love of kindred and friends, his justice and mercy, his devotion to lofty ideals and principles, his religious convictions and feelings, we may well believe that our friend answered all the calls of duty with conscientiousness and faithfulness, and that he realized that ideal of Thackeray so beautifully expressed in his poem *The End of the Play*:—

"Come wealth or want, come good or ill,
Let young and old accept their part,
And bow before the Awful Will,
And bear it with an honest heart.
Who misses or who wins the prize—
Go, lose or conquer as you can;
But if you fail, or if you rise,
Be each, pray God, a gentleman."

Mr. MOSES WILLIAMS said that he esteemed it a privilege to pay a tribute to the memory of this rare man whose friendship he had enjoyed for many years. He had never known a man of higher ideals or one more scrupulous as to every detail of any and every matter intrusted to his hands. The confidence which his clients had in him was unbounded; and it was no uncommon occurrence for parties with conflicting interests, involving large amounts of money, or other property, to intrust the conduct of the most important and

intricate transactions entirely to him. Mr. Williams spoke of the weight of responsibility which rested upon a professional conveyancer when he had to decide whether certain technical flaws in a title were of such a character as to warrant him in advising his client that, nevertheless, he might safely purchase the property thus affected. He alluded to Mr. Balch's anxiety upon such occasions, and to the fact that his conscientiousness in this regard had caused him many a sleepless night. Mr. Williams remarked, in passing, upon Mr. Balch's pre-eminence in his chosen branch of the legal profession and upon its being universally acknowledged by the Bar. He spoke also of Mr. Balch's great kindness, especially to the younger men in his profession,—in which he himself had shared,—and remarked that Mr. Balch appeared to be never quite so happy as when doing a kindness to another. Mr. Williams alluded to Mr. Balch's arduous professional labors, to his wide reading and scholarship, to the fact that he was always abreast of the best current thought, and to his patriotic interest, as a private citizen, in public affairs.

Mr. JOHN NOBLE then paid this tribute to Mr. Balch's memory :—

Among the many losses which have fallen upon the Boston Bar within the last year, perhaps there is no single one which will be more felt, or which leaves a wider gap, than that caused by the death of our late associate, Francis V. Balch. He occupied a unique position. He was not an advocate,—he seldom, perhaps never, appeared before juries; he was not the aggressive fighter who was looked to when the Bar had to take some stand; he did not push to the front when public occasions arose; his name was not on everybody's lips or in every newspaper, and yet, in his way, and from the nature of his career, few men, perhaps, in the profession were more widely known,—there were few, perhaps, whose reputation rested on a surer foundation, or whose influence is likely to last longer. A lawyer's memory is proverbially evanescent,—it is only when it is linked with some permanent, enduring reality that it is likely to outlive him.

In his special province,—conveyancing, the management of estates, the administration of trusts, and the whole law of Real Property,—Mr. Balch stood in the very front rank. Of absolute integrity and honor, of calm, sound judgment, well versed in the decisions of courts, of wide and accurate learning in the underlying and established principles of those branches of the law, and with unusual powers of intellect, his reputation was second to none; and he was recognized as an authority. He was a wise and sagacious adviser, of singularly judicial temperament, and men sometimes chose to abide by his decision rather than await a resort to the courts.

Pale, attenuated, and stooping, Mr. Balch had more the air of the old-time scholar or recluse than of the forceful and successful lawyer or the energetic man of affairs; but underneath this exterior that seemed so frail, was an indomitable will, an untiring energy, and a resolution that carried him through the persistent, unremitting labor and strain which marked his whole life. That calm confidence and unflinching determination sustained him in the trying beginning of his professional life. A clientless, briefless lawyer,—undisheartened by years of seeming failure, which would have discouraged most men, and never doubtful of the final result,—he turned those days of waiting into the effective preparation which equipped him for that position in his profession to which he aspired, which he attained, and which he filled with signal success for so many years.

Generous, self-sacrificing, public-spirited; always ready to help his brethren, and especially the younger, in their perplexing doubts and fears, and to turn to their service his best powers of advice or assistance; courteous, kind, and sympathetic,—he was universally beloved; while for his sturdy virtues, his rare intellectual strength, and his pure and high-toned character, he was as universally admired and respected.

Mr. HENRY H. EDES, having been called upon, said :—

Several years ago, while in a distant city, I attended Divine worship with the friends whom I was visiting. The service opened with an invocation and was followed by one of those lurid hymns of Dr. Watts which dwell upon the wrath of God. Then came the long prayer; and then the sermon,—one which would have de-

lighted the heart of Jonathan Edwards, and a performance better suited to his time than to ours. A short prayer followed, and before the benediction was pronounced another hymn — twin brother to the first — was sung; but in this "Chamber of Horrors" there were two bright spots, strangely and beautifully and gloriously contrasting with the rest of the service, — the organ voluntary, first wrought out in the brain of Mendelssohn, and the selections from Scripture. As we left the church my host and hostess made haste to express their regret that Dr. — should have chanced to preach a doctrinal sermon that morning. I begged them to give themselves no concern, because whenever I listened, as I had that morning, to the reading of the Sermon on the Mount, the mere speculations of a human mind upon theology were to me of little consequence; and I added that I had the rare privilege of knowing a man who exemplified in his daily life all the Beatitudes. I need not say to you who knew him that I referred to our associate who has so recently gone from us to receive the reward promised to the pure in heart.

I knew Mr. Balch only in middle life. His presence was a benediction to all who came in contact with him, whether in social or professional life; and, to a superlative degree, he incarnated in himself the spirit of meekness, of humility, of courtesy. One of the busiest of men, he always found time to be polite, casting equally upon the lowly and the great the sunshine of his affability.

What Mr. Balch was to those who had known him in his college life, and how strong the tie was which bound him to those early friends, may be inferred from the extracts from their recent letters which Mr. Rackemann has just read to us.

Mr. Balch, doubtless, had "the faults of his quality;" but as we look back into the past and recall this sweet-hearted, gentle spirit, and try to remember what his shortcomings really were, we find that our Quaker poet long ago described them in fitting phrase: —

"And who could blame the generous weakness
Which, only to thyself unjust,
So overprized the worth of others,
And dwarfed thy own with self-distrust.

"All hearts grew warmer in the presence
Of one who, seeking not his own,
Gave freely for the love of giving,
Nor reaped for self the harvest sown."

Mr. DENISON ROGERS SLADE read the following paper: —

HENRY PELHAM, THE HALF-BROTHER OF
JOHN SINGLETON COPLEY.

Now that the name of Pelham is before us in connection with the mezzotint engraving of Sir William Pepperrell which Mr. Gay exhibited at the last Stated Meeting of the Society, I wish to speak of the youngest son of Peter Pelham,¹ Henry Pelham of Boston, and later of London and Ireland, — a man of charming personality, a constant companion in his younger days of his "brother Copley," and an artist to whom has never been accorded, in New England, the place to which his talents and position entitled him.

Peter Pelham had three wives. By his first wife, Martha, whom he brought from London, he had three sons: Peter, baptized 17 December, 1721, who married and emigrated to Virginia where he left many descendants; Charles,² — whose autograph letter I shall presently read, — baptized 9 December, 1722 (both at St. Paul's, Covent Garden, London); and William, who was born in Boston, 22 February, 1729, and buried 28 January, 1761.³

Pelham's second wife was Margaret Lowrey, whom he married 15 October, 1734. By her he had Penelope, born in Boston in 1735, who died in 1756;⁴ and Thomas, born in Newport, R. I., who left numerous descendants.⁵

¹ See Mr. William H. Whitmore's paper on The Early Painters and Engravers of New England in *Proceedings of the Massachusetts Historical Society* for May, 1866, ix. 197-216, which contains much interesting matter concerning Henry Pelham and John Singleton Copley. See also Mr. Whitmore's letter describing Copley's portrait of Peter Pelham, *Ibid.* for February, 1873, xvi. 57; and Martha Babcock Amory's Domestic and Artistic Life of John Singleton Copley, R. A., *passim*.

² Charles Pelham, successively of Boston, Medford, and Newton, was a merchant, and later a schoolmaster. He married, 6 December, 1766, Mary, daughter of Andrew Tyler, and niece of Sir William Pepperrell. (*Proceedings of the Massachusetts Historical Society* for May, 1866, ix. 206.)

³ Boston Town Records; and Trinity Church Registers.

⁴ She is said to have died, unmarried, at Boothbay, Maine.

⁵ See William H. Whitmore's communications to the *Heraldic Journal*, iv. 175-182; and the *New England Historical and Genealogical Register* for October, 1872, xxvi. 399-401. Mr. Whitmore has since come into possession of much further information respecting Peter Pelham's descendants by his second marriage which he is intending to publish.



The Registers of Trinity Church record the third marriage of Peter Pelham,—to Mary (Singleton) Copley, the widow of Richard Copley,¹ on 22 May, 1748. By her he had but one son, Henry, the subject of this paper, who was born in Boston, 14 March, 1748–49, and baptized at Trinity Church on the nineteenth of the same month, and a daughter, Helena Maria, baptized 26 May, 1751.²

Until within a decade the parentage of Peter Pelham, the emigrant, was unknown; and it was supposed that he was married but twice. There also existed doubts as to the antecedents of Thomas Pelham and his sister Penelope. On the first of February, 1888, the following advertisement appeared in the New York Herald:—

Peter Pelham, who, at the beginning of this Century, was residing somewhere in Virginia, Charles Pelham, who, at the same period, was living at Newton, near Boston, Massachusetts, Henry Pelham, who, at the same time, was residing in Ireland, and Elizabeth, Penelope, Thomas, and Mary Pelham, the children of Thomas Pelham, who were, about the same time, living in Boston, Massachusetts, or their legal representatives, may hear of a fortune by applying to Messrs. Dougal & Co., 67 Strand, London, England.

The above persons are descended from one Peter Pelham, who emigrated from England about the middle of the last Century, and settled in or near Boston, Massachusetts. Country papers please copy.

This advertisement having been seen by a member of the family in Boston, he procured from London the following Memorandum from the Records of the Court of Chancery which furnishes the name of the Emigrant's father, the fact that the Emigrant was thrice married, and the names of his children, thus solving the mystery as to the antecedents of those who are thus found to have been the fruit of his second marriage:—

¹ Administration on the estate of Richard Copley, "tobacconist," was granted to his widow, Mary Copley, 2 May, 1748, on which day she gave Bond to the Judge of Probate in £100,—the Sureties being Peter Pelham, "gentleman," and Robert Skinner, "peruke-maker," both of Boston. The Inventory of the estate, taken 6 May, following, by Thomas Waite, Ebenezer Lowell, and William Mollvaine, amounted to £97. 8. 6. It was presented to the Court by the widow and administratrix 18 May, 1748,—four days only before she became the wife of Peter Pelham. (Suffolk Probate Files, No. 8079.)

² Trinity Church Registers, which, under date of 26 May, 1752, record the burial of Maria Pelham who, probably, was identical with this child.

Memorandum as to Order made in the Chancery Action of Pelham v. Compton on 9th November, 1790, the Fund in Court to the Credit of the Action being now £765. 18. 9 Cash.

The Action is between Peter Pelham, Charles Pelham, Elizabeth Pelham, Penelope Pelham, Mary Pelham, an Infant, by Henry Pelham, her next friend, and Henry Pelham as *Plaintiff*, and Henry Compton, John Compton, and William Pelham as *Defendants*.

The Order above referred to first recites the Bill filed in the Action. From this it appears:—

(1) That Peter Pelham^{*} was the Grandfather of the *Plaintiffs* Peter Pelham, Charles Pelham, and Henry Pelham, and great Grandfather of Elizabeth Pelham, Penelope Pelham, Thomas Pelham, and Mary Pelham.

(2) That Peter Pelham (the Grandfather) made his Will on the 30th June, 1756, whereby, after bequeathing certain legacies, he gave his estate to Trustees, therein named, upon Trust, to pay the Income to his daughter Helena Pelham for life, and after her death to stand possessed of the same for the benefit of his son Peter Pelham [the emigrant] if he survived his sister, otherwise for the benefit of Peter Pelham's (the Son's) Children as therein mentioned.

(3) That Peter Pelham (the Grandfather) died on the 23rd May, 1756, leaving his daughter Helena Pelham¹ surviving, who, however, died on the 12th October, 1782 (unmarried).

(4) That Peter Pelham (the Son) died in 1751 (thus predeceasing Peter Pelham the Grandfather), having been married three times.

(5) That the children of his Marriage with his first Wife were the *Plaintiffs*, Peter Pelham, and Charles Pelham; and William Pelham.

(6) That the children of his Marriage with his second Wife were Thomas Pelham and Penelope Pelham.

(7) That the children of his Marriage with his third Wife were Henry Pelham and Helena Pelham.

(8) That certain of the above mentioned persons had died, some leaving children, others without leaving children.

(9) That the Plaintiffs claimed to be the only issue of Peter Pelham (the Grandfather) and as such to be entitled to his Estate.

* Note. The address and description of this Gentleman are not given.

The Order then directs that certain enquiries and accounts be made and taken with the view of ascertaining particulars of the estate and debts of Peter Pelham (the Grandfather) and also of ascertaining who the persons were then entitled to the residue of such Estate.

¹ Two letters written by her to her brother Peter, the Emigrant, are printed in 1 Proceedings of the Massachusetts Historical Society for May, 1888, ix. 202, 206, 207.

And the Order concludes by directing that the further consideration of the matter shall be reserved until the Master makes his Report, after making and taking the enquiries and accounts before directed.¹

When Henry Pelham was born, his half-brother, John Singleton Copley, was eleven years old.² Peter Pelham died in 1751, and was buried 14 December of that year,³ leaving the widow and her sons in a house⁴ in Lindall Row, now known as Exchange Place. Here, surrounded by Peter Pelham's works and drawings, and undoubtedly profiting by the instruction and experience that he must have obtained from associating with so talented a man as his step-father, Copley began his remarkable career as a portrait painter. Henry Pelham's portrait, as a boy of eight or ten years of age, has come down to us in Copley's famous picture, entitled the Boy and the Squirrel.⁵ This canvas, judging from the age of the sitter, must have been painted about 1758.

¹ These papers are here printed for the first time through the courtesy of Charles Pelham Greenough, Esq.

² Copley was born in Boston, 3 July, 1737, and died in London, 9 September, 1815. He was buried in the Hutchinson family tomb, in the church of St. John the Baptist at Croydon, in Surrey. There, also, are interesting monuments to several of the Archbishops of Canterbury who, for several centuries after the Conquest, had a residence at Croydon where, in 1578, Archbishop Parker entertained Queen Elizabeth and her Court for several days.

³ Trinity Church Registers. Administration on the estate of Peter Pelham, "schoolmaster," was granted to his widow, Mary Pelham, 23 June, 1752, when she gave Bond in £200, her sureties being William McIlvaine, "trader," and Charles Pelham, "merchant," both of Boston. (Suffolk Probate Files, No. 10,063.)

⁴ This house probably stood on one of the two lots making the corners of what is now Exchange Place and Congress Street, formerly known as Leverett's Lane, and later as Quaker Lane, because of the fact that the Quaker Meeting House stood where Monk's Building now is. On the fifteenth of November, 1742, the Selectmen on Peter Pelham's petition granted him liberty "to dig up the Pavement & open the Ground in Leverett's Lane in Order to repair the Drain running from the House wherein he Dwells into the Common Shore." (Boston Record Commissioners' Reports, xv. 367.) The Boston Evening Post, No. 674, of Monday, 11 July, 1748, contains a notice that "Mrs. Mary Pelham (formerly the Widow Copley on the Long Wharf, Tobacconist) is remov'd into Lindel's Row, against the Quaker's Meeting House, near the upper End of King Street, Boston," etc. Cf. Shurtleff's Topographical and Historical Description of Boston (Third edition), pp. 230-233.

⁵ An engraving of this picture may be seen in the Memorial History of Boston, iv. 306. Pelham was educated at the Boston Latin School in the same Class (1756) with Gen. Henry Knox, Lieut.-Gov. William Phillips and Ward Nichols Boylston.

It was but natural for Henry Pelham to develop artistic tastes, with such a guide and daily companion as his half-brother Copley. The fact that Henry Pelham was established as a portrait painter in Boston is demonstrated by his Power of Attorney to Henry Bromfield, Esq., of Boston, and also by his correspondence with Isaac Winslow Clarke, regarding Colonel Elihu Hall and his half-length portrait, of which I shall speak presently. The text of the Power of Attorney is as follows:—

TO ALL PEOPLE to whom these presents shall come greeting Know ye that I Henry Pelham of Boston in the County of Suffolk and Province of Massachusetts Bay in New England Portrait Painter have constituted and appointed Henry Bromfield Esq: of Boston aforesaid to be my true and lawful Attorney for me and in my Name and to my use to ask demand sue for recover and receive and on Receipt thereof give discharges for all sums of Money Debts Accounts Reckonings, Claims and demands of every nature and kind where of I have cause of suit or Action in the aforementioned Province and suit in Law or Equity for recovering thereof to commence and pursue hereby empowering him my said Attorney, to appoint Attorneys and Substitutes under him. And I hereby covenant to Ratify and confirm whatever be my said attorney shall do or cause to be done in the Premises by Virtue hereof. In Witness whereof I have hereunto set my hand and Seal this Ninth day of March Anno Domini One Thousand seven Hundred and seventy Six and in the sixteenth year of his Majestys Reign

Signed sealed and delivered

in presence of us

BYFIELD LYDE

SARAH LYDE

HENRY PELHAM

Seal

Province of Massachusetts Bay —

Suffolk S^t Boston March 9th 1776

Henry Pelham acknowledged this instrument to be his free Act and Deed

Before me

PETER OLIVER, Chief Justice.

It is well-known that Copley made a handsome living by portrait painting. This, together with his marriage to Susannah Farnum,¹

¹ Susannah Farnum, daughter of Richard Clarke and Elizabeth his wife, was born in Boston, 20 May, 1745 (Boston Record Commissioners' Reports, xxiv. 255.) She married Copley on Thursday evening, 16 November, 1769.



a daughter of Richard Clarke,¹ an opulent merchant of Boston, enabled him to live in considerable style for those days. Some idea how Pelham looked, and in what sort of dress he probably appeared, may be got from a letter written by Colonel John Trumbull, in 1772, while a student at Harvard College, who visited Copley, and described him "as attired in a crimson velvet suit, laced with gold."² After his marriage, Copley lived "in a beautiful house fronting on a fine open common."³ It is probable that Henry Pelham was a frequent visitor at this house, which stood on the present site of the Somerset Club House on Beacon Street. Here John Singleton Copley, Jr., the future Baron Lyndhurst, thrice Lord Chancellor of England, was born, 21 May, 1772.⁴

That Pelham was personally very attractive and fond of society, is proved by the distinct recollection of conversations which the writer held with the late Mrs. Margaret-Bromfield (Pearson) Blanchard, the granddaughter of Henry Bromfield of Harvard, Massachusetts.⁵ Down to the time of his departure for England,

(The Massachusetts Gazette, Extraordinary — Draper's — of Friday, 17 November, 1769; and The Boston Evening Post, No. 1782, of Monday, 20 November, 1769.) The Boston Gazette and Country Journal, No. 763, of Monday, 20 November, 1769, announces the marriage as having occurred "last Wednesday evening," — i. e., 15 November, which is probably an error. The Town and Church Records fail to show this marriage, but the Intention of Marriage was entered 23 October, 1769. (Boston Town Records.)

¹ Richard Clarke was one of the consignees of the Tea destroyed in 1773. Copley's large canvas portraying a group of Richard Clarke's family is now in the Boston Museum of Fine Arts. It is fully described in Mrs. Amory's Domestic and Artistic Life of John Singleton Copley, R.A., pp. 77-80.

² Proceedings of the Massachusetts Historical Society for January, 1873, xii. 223. Cf. Trumbull's Autobiography, Reminiscences and Letters, p. 11.

³ Proceedings of the Massachusetts Historical Society for January, 1873, xii. 225, in a Memoir of Copley by the late Augustus Thorndike Perkins.

⁴ See a letter of John Singleton Copley, Jr., post, p. 212. Lord Lyndhurst died in London, on the morning of 12 October, 1853. (Martin's Life of Lord Lyndhurst, p. 513.) Mrs. Amory (page 39) gives this date as 11 October.

⁵ Mrs. Blanchard was born 10 November, 1787. She married, 30 May, 1828, the Rev. Ira Henry Thomas Blanchard (H. C. 1817), minister of the First Unitarian Church in Harvard. (Nourse's History of Harvard, pp. 281, 232. See post, pp. 202-208, and notes; and The Bromfields, — a pamphlet of nineteen pages, by the late Daniel Denison Slade, containing much valuable information concerning this family, privately reprinted, with additions, from the New England Historical and Genealogical Register for 1871, 1872, — Volumes xxv., xxvi.)

in 1776, Henry Pelham was a particular friend and admirer of Mrs. Blanchard's mother, who was Miss Sally Bromfield. I have in my possession a copy of Baekerville's beautiful edition of The Poetical Works of John Milton, in two volumes (1769), from the text of Thomas Newton, D.D. Both volumes are inscribed: —

"For Miss Sally Bromfield
with M^r H. Pelham's
Sincere & affectionate Compliments —
Boston, December, 1775."¹

I have brought with me this afternoon a letter written by Henry Pelham to Colonel Elihu Hall at Salem, which has never been opened. This letter I propose to open now, in the presence of the members of The Colonial Society, one hundred and twenty-four years after Henry Pelham addressed it and sealed it with an impression from his signet ring. This letter was enclosed in another addressed to Isaac Winslow Clarke, as follows: —

Boston, Septem^r 10, 1774.

DEAR SIR, — Relying upon your Friendship and knowing your kind disposition to oblige, I have taken the liberty of inclosing a letter with an Account and Order upon Coll. Hall a Gentleman whose Picture I have lately done and who has left this place intending to go from Salem to England without taking that notice of me which I could have wished. The presenting him with these Papers if not too much trouble I should take as a particular kindness. He has often mentioned to me having property at Salem, Provisions I think he said which he has offered me in pay should he not have Money I beg you would receive in payment anything else he may have as I had rather trade some than lose my money. With Complim^t to Miss Lucy² and all Friends I am Sir your affectionate and Obed^t Servant

He Sails in Capt^t Lyde.

[Addressed]

To

M^r ISAAC W. CLARKE

Merchant in

Salem.

HENRY PELHAM.

¹ Other relics of Henry Pelham are an Edinburgh edition (Alexander Donaldson, 1768) of William Shenstone's Works, and a framed mezzotint (colored) of "Painting," both of which belonged to Miss Bromfield.

² It is not improbable that this reference is to Lucy Clarke, a daughter of

[Enclosures.]

Boston, Sept: 10. 1774.

Sir,— Upon being informed at your lodgings this morning that you had left this Place without any intention of returning previous to your sailing for England I was much surprized at your not settling with me for your picture before you went or at least calling upon me and giving some assurances respecting it. I should be sorry to think that you had not treated me with sufficient Honor and punctuallity I would therefore willingly attribute your neglect to forgetfulness of me and hope the request will prove that I have not attributed it to a wrong Cause.

M^r Startin¹ or M^r Clarke will present your account and a Draft upon you for the ballance the due honouring of which will be very acceptable to Sir

your Obed^{lt} Humst Servant

HENRY PELHAM.

[Addressed]

To
ELIHU HALL Esq'
in
Salem

Boston Elihu Hall Esq' to Henry Pelham D^r
1774 To his own Portrait half Length £14 .. 0 .. 0
 Supra C^r
By Cash 3 .. 0 .. 0
Balance due to H. Pelham £11 .. 0 .. 0

Sir,— Please to pay the above ballance to M^r Isaac Clarke and his recip' shall be a Discharge in full from Sir
Your humble Ser^t

HENRY PELHAM

To
ELIHU HALL Esq'.

Richard and Elizabeth Clarke, who was born in Boston 19 May, 1752. She was a younger sister of Isaac Winslow Clarke, who was born in Boston 27 October, 1746 (Boston Town Records); was a Loyalist; became Commissary-General of Lower Canada; and died, in 1822, on his passage to England. See post, p. 201, note.

¹ This was Charles Startin, of Boston and New York, and, apparently, of Salem also. He was a merchant having his address at No. 11 Wall Street, New York, in 1790-1793, and at No. 44 Wall Street, in 1794, while in 1795-1799 his address was No. 225 Broadway. In 1802 his widow (post, p. 206, and note 2) was living at No. 261 Broadway (New York City Directory, 1790-1802.) Mr.

September tenth, 1774! Seven long months before the battles of Concord and Lexington, Henry Pelham wrote and forwarded these documents to his friend Isaac Winslow Clarke, whose sister was the wife of "brother Copley." The letters reached Clarke too late, Colonel Hall, with his "half-length" portrait, having sailed for England.

Elihu Hall, a graduate of Yale College in 1781, was born in Wallingford, Connecticut, 17 February, 1714, the son of the Hon. John and Mary (Lyman) Hall. In 1734 he was admitted to practice as an Attorney by the New Haven County Court, and rose to the position of a leading lawyer of that part of the Colony. For many years — certainly as early as 1744 — he was King's Attorney for the County. In 1748, and often afterwards, he sat for Wallingford in the General Assembly. Active in military affairs, he held

Startin's death is thus recorded in The Daily Advertiser (New York) of Friday, 2 August, 1790: —

"On the 26th ult. as Mr. Charles Startin, of this city, was bathing at the public bath, he was, unfortunately, drowned. The body was found the next day, and decently interred in Trinity Church burying ground. He was a good and honest man."

His will, dated 18 March, 1778, with a codicil, signed 24 September, 1793, — both wholly in the handwriting of the testator, — was admitted to probate 8 August, 1799, and is recorded in the Surrogate's office, xliii. 25-27. Startin therein describes himself as "of Birmingham, in the County of Warwick," England. The witnesses were William Startin, John Simcox, and Bathshua Simcox. The codicil was not witnessed, and is chiefly explanatory of business matters; it mentions, however, the testator's "brother-in-law, I. W. Clarke of Montreal," where his daughter, Mrs. Margaret Coffin, is still living. See *ante*, p. 200, note. [She died there 9 January, 1800. See Obituary in the Boston Evening Transcript of Tuesday, 31 January, 1800 (First edition), p. 8.] The will and codicil were proved, before the then Surrogate, David Gelston, by Joshua Edwards, "merchant," and James Boyd, "gentleman," both of New York, who testified, under oath, to the handwriting of both documents and "declared that they and each of them verily believed that William Startin, John Simcox, and Bathshua Simcox, the subscribing witnesses to the said will, do actually reside in the Kingdom of Great Britain or in parts beyond sea, and that . . . [they] nor either of them are nor ever have been in the United States of America." The present Surrogate states that "there have been no proceedings in this court in the estate of Charles Startin, deceased, since the probate of the will." See post, p. 208, note 2. Cf. 1 Proceedings of the Massachusetts Historical Society for July, 1865, viii. 339, where, in a letter of John Andrews, dated 10 August, 1774, he is referred to as Charles Startin, — an error, doubtless, of either the transcriber or printer.

This note has been furnished by our associate, Mr. Henry H. Edes.

the rank of Captain, and in the summer of 1746 raised a Company for the proposed Expedition against Canada. He subsequently rose to a Colonely. In January, 1757, he was one of four Special Commissioners sent by the General Assembly of Connecticut to Boston to confer with delegates from the other Colonies as to a plan for conducting the next campaign. At the Revolution he espoused the British side, and took refuge in England. He died in London early in 1784. His wife, whom he married 2 January, 1734, was Lois, eldest daughter of the Rev. Samuel Whittlesey, of Wallingford (Y. C. 1705), and a great-granddaughter of President Chauncy of Harvard College. She was born 28 November, 1714, and died 29 September, 1780, having borne her husband four sons and six daughters.¹

After the departure from Boston of Richard Clarke, the father-in-law of Copley, and his sons, the business affairs were settled by a son-in-law, Henry Bromfield.² After the excitement of the Revolutionary disturbances had subsided, the papers and business correspondence of the Clarkes were carried to the Bromfield mansion at Harvard, where they were carefully kept by succeeding generations; but especially were they treasured by Mrs.

¹ Dexter's Biographical Sketches of the Graduates of Yale College, i. 427; Fowler's Memorials of the Chancellors, p. 203.

² Colonel Henry Bromfield was born in Boston, 12 November, 1727. He was a prominent citizen of Harvard, Massachusetts, where he died, of pneumonia, 9 February, 1820, at the age of 92 years. He was buried in the family tomb in King's Chapel Burial Ground, Boston. (Nourse's History of Harvard, pp. 132-133; Obituary in the Columbian Centinel, No. 3743, of Wednesday, 23 February, 1820.) The Town Records of Harvard give the date of Colonel Bromfield's death as 10 February, 1820. The Rev. Dr. Nathaniel Thayer, of Lancaster, preached a Funeral Sermon, 16 February, 1820, from Acts xi. 24, — "He was a good man." The sermon was printed at Andover. It contains a discriminating notice of Colonel Bromfield's strong and lovable character, and some biographical data by which it appears that he was a son of Edward Bromfield, an eminent merchant of Boston, and that "he was a lineal descendant of the fourth generation from the Rev. John Wilson, the first minister of Boston." See post, p. 210, note; and New England Historical and Genealogical Register for 1872, xxvi. 38. The will of William Bromfield of Stoke Newington, Middlesex, England, 1561, the earliest known ancestor of the American Bromfields, with interesting notes on the family, may be read in *Ibid.* for 1809, iii. 8, 10. A sketch of Colonel Bromfield, entitled *A New England Country Gentleman*, written by the late Daniel Denison Slade, M.D., appeared in the New England Magazine for March, 1890, New Series, ii. 3-20.

Blanchard, the granddaughter of Henry Bromfield, who, dying in Harvard on the twenty-ninth of November, 1876, bequeathed them to her kinsman, the late Dr. Daniel Denison Slade.³

Henry Pelham's name appears in the list of American Loyalists, with those of John Singleton Copley, Richard Clarke, Isaac Winslow Clarke, and many others. Copley left Boston in June, 1774, and was followed, the next year, by his wife and all his children, save the youngest boy, who was left in the charge of his grandmother, Mrs. Pelham. They embarked at Marblehead, 27 May, 1775, "in the Minerva, — the last ship which sailed out of Massachusetts Bay under the British flag."⁴

The departure of Copley for Europe doubtless caused Henry Pelham to leave Boston, — in 1776. Previous to his departure, in August, 1775, he drew a Plan of Boston, which bore his autograph, and was engraved in London, in aquatinta, in 1777. Dr. Belknap said of this work, in 1789, "I believe there is no more correct [plan] than Mr. Pelham's."⁵ By an interesting letter⁶ which Pelham wrote to Copley (23 September, 1795) on the eve of his son's departure for Boston, to look after his father's interests in the Beacon Hill estate, it appears that Pelham had the care of it during Copley's absence from Boston, in 1771, 1774 and 1775, and that he made a map of this property over the title to which so many legal battles were fought.

In London, Pelham gave instruction in perspective, geography, and astronomy, at the same time painting portraits and minia-

¹ The Bromfield School, at Harvard, was built, to perpetuate there the Bromfield name, with funds bequeathed by Mrs. Blanchard. These funds, for the most part, had come to her from her Bromfield kinsfolk. The ancient family portraits in Mrs. Blanchard's possession at the time of her death adorn the walls of the building. See Memoir of Dr. Daniel Denison Slade in the Transactions of this Society for April, 1899.

² Mrs. Amory's Domestic and Artistic Life of John Singleton Copley, R.A., pp. 68, 69.

³ Jeremy Belknap to Ebenezer Hazard. (Proceedings of the Massachusetts Historical Society for June, 1875, xiv. 94.) This Plan is described in the Memorial History of Boston, iii. pp. ii, iii, and reproduced there, — between pp. vi and vii. There is a better reproduction of it in the Siege and Evacuation Memorial, 1876. It is sometimes known as Urquhart's map. Cf. Shurtleff's Topographical and Historical Description of Boston (Third edition), pp. 96, 118.

⁴ This letter is printed in Mrs. Amory's Domestic and Artistic Life of John Singleton Copley, R.A., pp. 129-131.

tures; and in the Catalogue of the Royal Academy of 1778, his name appears as an exhibitor. That he was also an engraver in mezzotint is proved by a communication in London Notes and Queries¹ respecting a portrait of the famous Countess of Desmond.

Pelham married Miss Catherine Butler, daughter of William Butler, Esq., of Castle Crine,² County Clare, Ireland, who died at the birth of twin sons, named, for their two grandfathers, Peter and William. Her death is referred to in the following letter addressed by Madam Pelham to Miss Sally Bromfield,³ then at Harvard, Mass., — a daughter of Col. Henry Bromfield: —

¹ No. 104, for October, 1851, First Series, iv. 306. We copy the following passages which refer to Henry Pelham: —

"The print (same size as the original) is a mezzotint, ten inches by seven inches and a half, and has under it the following inscription:

CATHERINE FITZGERALD (the long-lived) COURTESAN or DESMOND, from an original Family Picture of the same size, painted on Board, in the possession of the Right Honorable Maurice Fitzgerald, Knight of Kerry, &c. &c. &c., to whom this plate is most respectfully dedicated by her very obedient and much obliged humble servant, HENRY PELHAM.

This illustrious lady was born about the year 1664, and was married in the reign of Edward IV, lived during the reigns of Edward V, Richard III, Henry VII, Henry VIII, Edward VI, Mary, and Elizabeth, and died in the latter end of James I, or beginning of Charles I's reign, at the great age (as is generally supposed) of 162 years. Published as the Act directs, at Bear Island, June 4, 1806. By Henry Pelham, Esq."

The following paragraph furnishes some facts concerning Pelham which we have not met with elsewhere: —

"Of the Mr. Pelham who published the print I have described, there are some particulars which may interest your readers. He will be found among the correspondents of the late General Vallancey, whose interest in Irish antiquities is well known. Mr. Pelham was an ingenious gentleman, who came to Kerry in the end of the last century, in the character of agent to the Marquis of Lansdowne; which engagement, after a few years, he resigned, but continued in the county, a zealous studier of its antiquities, and intending, as I have heard, either a new County History, or a reprint of Smith's work. He was a good civil engineer, and executed a great part of a large county and baronial map, afterwards finished by another hand. Mr. Pelham, who perished prematurely by sudden death, in his boat, while superintending the building of a Martello tower on Bear Island, in the River Kenmare, in the very year he published this print, is said to have been an uncle by half-blood to the present Lord Lydehurst, whose grandmother, Sarah [Mary] Singleton, is said to have married to her second husband, — Pelham, an American — Henry Pelham being the only issue of her second marriage, as John Singleton Copley, father to the ex-chancellor, was of her first." Cf. ante, p. 194.

² Burke's Landed Gentry (edition of 1804), ii. 1849.

³ Miss Bromfield was born 1 May, 1757, and died 10 February, 1831. (Records of the First Unitarian Church in Harvard.)

Boston, Sept. 22, 1784.

MY DEAR SADY, — I duly note your kind and agreeable fav^r of the 6th Inst: which believe me I should have sooner answer'd but you well know my inability, and have not till now had an opportunity of doing it by means of a friend. I greatly regret your indisposition which prevented me the pleasure of seeing you, but hope [for] the pleasure of hearing you are better. I thank you for your kind intelligence from London, and in return have the pleasure to inform you that I have since Rec^d a Letter from M^r Copley of June 17. wherein he informs me that himself and Family are well, as also M^r Rogers¹ and M^r Clark,² who all desire a tender remembrance to their connections here. Inclos'd is a Copy of the Inscription on my dear Harry's Wife's Tomb, which I have got Copied on purpose for you, that you may not be at the trouble of returning it. My best respects wait on your good parents, yourself and Sister and remain

Your affectionate

MARY PELHAM.

[Copy of the Inscription.]

FOR M^r CATHERINE PELHAM'S TOMB STONE
BY WILLIAM HAYLEY ESQ.³

Record thou faithful Marble Pelham's worth
Who dying gave her double offspring birth,
Ye Babes! who know not in your infant state
Ye bought existence at too dear a rate
Rise with each promise parents can desire
To sooth the sufferings of your widow'd Sire
For Oh! if haply for his peace Ye prove
Adorn'd with all that claims paternal love
Scarce can that all compensate for the Wife
Who ceas'd to bless him when ye rose to Life.

Shortly after the date of this letter Miss Bromfield married the Rev. Eliphalet Pearson.⁴ The following letter, addressed to her at

¹ Mrs. Daniel Denison Rogers. See *post*, p. 210, note 2.

² Richard Clarke, — Mrs. Copley's father.

³ Hayley the poet (1745-1800). Southey wrote that Hayley was, "in his time, by popular election, King of the English poets;" but, in a letter to Coleridge, he adds, "everything about that man is good except his poetry."

⁴ The Rev. Dr. Eliphalet Pearson was the son of David Pearson, Jr. (born 22 August, 1728) and Sarah Danforth, of Bradford, to whom he was married 8 November, 1750, and by whom he had at least four children besides Eliphalet. Dr. Pearson was born in Byfield, Massachusetts, 11 June, 1752 Old Style (Col-*lin's* History of Newbury, p. 356). He was baptised on Sunday, 14 June, 1752,



Cambridge, contains a charming picture of Mrs. Gardiner Greene,¹ who is referred to as "Betsey": —

by the Rev. Moses Parsons (Byfield Congregational Church Records). The Faculty Records of Harvard College (iii. 160) state that he was born 22 June, 1752. As this date is in the List of Freshmen who entered in July, 1760, it was, doubtless, made to conform to New Style (adopted in the year of Dr. Pearson's birth) by adding the requisite eleven days. This is confirmed by the inscription on the brass plate on the iron fence surrounding his solitary grave near the entrance to the cemetery in Greenland, New Hampshire. The date of 11 January, 1752, which Dr. Samuel A. Green finds in Mr. Sibley's materials for future volumes of his *Harvard Graduates*, is erroneous.

X
X

Dr. Pearson was prepared for college at Dummer Academy. Graduating at Harvard College, in 1773 — the first year in which the names of the graduates were alphabetically arranged in the Triennial Catalogue — he taught a grammar school in Andover, before the Revolution; was the first Principal of Phillips Academy, Andover (1778-1786), in the establishment of which he was active; and, in 1802, on the death of Lieutenant Governor Phillips, he succeeded him as President of its Board of Trustees. He was called to Cambridge to fill the Hancock Professorship of Hebrew and other Oriental Languages. This position he held from 1786 till 1806. In 1800 he was elected a member of the Corporation to succeed James Bowdoin (H. C. 1771). On the death of President Willard, whom he aspired to succeed, Dr. Pearson was appointed Acting President of the College. A Calvinist, he was a minority of one in the Corporation and strongly opposed the election of Henry Ware, in 1805, to the Hollis Professorship of Divinity. When, therefore, in the following year, Professor Webber, also a Unitarian, was preferred to himself for the Presidency of the College, Dr. Pearson resigned both his Professorship and his seat in the Corporation. His active interest in the establishment of the Theological Seminary at Andover, in which he was the first Professor of Sacred Literature, in 1808, is well known. In 1803 he received the degree of LL.D. from Yale and the College of New Jersey. He was a member of the Massachusetts Historical Society and a Fellow of the American Academy of Arts and Sciences of which he was Corresponding Secretary. During his official residence in Cambridge he occupied, for a time, the house now numbered 30 in Holyoke Street, at the north-easterly corner of Holyoke Place, formerly the home of President Holyoke and, later, of his widow. In 1792, Dr. Pearson bought and occupied the Holmes Place. (Middlesex Deeds, civi. 318.) His first wife was Priscilla, a daughter of President Holyoke, whom he married, at Andover, 17 July, 1780 (Andover Town Records). She died at Andover 29 March, 1782. As his second wife he married Miss Bromfield, at Harvard, 29 September, 1786. Dr. Pearson died 12 September, 1826, while absent from his home in Harvard, on a visit to the Rev. Ephraim Abbot,

¹ Much that is interesting concerning Mrs. Greene, after her marriage, may be read in her daughter Mrs. Amory's *Domestic and Artistic Life of John Singleton Copley, R.A.*

Boston, April 7th, 1787.

MY DEAR M^{rs} PEARSON, — I know it will give you pleasure to hear that I have had a letter from my son Henry by the Feb^r Packet — he was then in London, and gives me the most pleasing accounts respecting my son Copley and his dear family — I shall transcribe what he says of my Grand Daughter Eliza as his pen will do more justice to her merit than any thing I can say on the subject —

" Your Grand Daughter Betsey is growing a very fine Girl, she is very handsome, but her disposition surpasses every praise I can bestow upon it, she has shewn an extraordinary taste in making artificial flowers, with which she has decorated an alcove in her father's House, and has executed them with a taste so charming, and with so much nature and truth as to deceive every person who has seen them — The following very pretty lines will afford you some pleasure — they were wrote by Councillor King¹ and addressed to Miss Copley, on seeing her alcove of Flowers : —

1.

Hail mimic Art whose nice conceit
With just proportion fires the mind
Whose plastic touch with skill replete
So near allied to truth we find.

2.

A Copley's pencil bids us know
Of human Art the wondrous pow'r
If Pierson's fate in paint can glow²
Why may not bloom the mimic flower?

the minister of the church in Greenland, New Hampshire, who had married his daughter. Dr. Pearson's portrait, painted, in 1818, by Samuel Finley Breese Morse, hangs in the Library of the Theological Seminary at Andover. There is a more lifelike portrait in the Hall of Phillips Academy, Andover. (Sprague's *Annals of the American Pulpit*, ii. 126, 131; Willard's *Memories of Youth and Manhood*, i. 158, 193-195, 200-208, and ii. 173-179; and Nurse's *History of Harvard*, pp. 136, 504.) Cf. ante, iii. 177-179; and *Historical Collections of the Essex Institute*, iii. 60. See also Professor Edwards A. Park's Address on Dr. Pearson in *The Congregationalist* (newspaper), of Wednesday 3 July, 1878, xxx. 211; Eliphilet Pearson at Andover, in *The Unitarian Review and Religious Magazine* for August, 1878, x. 193 & seq.; and Dr. Cecil F. P. Bancroft's article on *The Grave of Dr. Pearson* in *The Andover Townsman* (newspaper), No. 49, of 14 September, 1888, which contains much that is interesting concerning this remarkable man.

I am indebted for this note to our associate, Mr. Henry H. Edes.

¹ Edward King, F.R.S., F.S.A. (c. 1735-1807), a miscellaneous writer in prose and verse, and a member of Lincoln's Inn, who was called to the Bar in 1763, probably was the author of these lines.

² See Letter of John Singleton Copley, Jr., and Mr. Porter's Remarks thereon at the Stated Meeting in March, 1800, post, pp. 212-215.

3.

Bright maid from such a parent sprung
 Nature in thee beholds her Child,
 Whether you form the tendrel young
 Or deck the shoot with beauty mild.

4.

Had Flora seen thy gay Alcove
 The matchless offspring of thy Art
 Those mellow'd tints that claim our love
 To them their fragrance she'd impart.

She is now my pupil in Perspective and Geography for both which she has a great fondness, and learns them with great facility and ease. I shall soon have the pleasing task of teaching her the rudiments of Astronomy. John and Mary are both sensible good children — They were at home for a few days since my arrival and are now returned again to their Schools."

I make no apology my dear Mad^m for this long paragraph as I know the goodness of your heart leads you to partake of the happiness of your friends — I hope your health is perfectly re-established, assure you I was very anxious for you, and rejoice'd when I heard you was recovering — I have not seen your Father or Brother this some time, hope they are well, beg you will remember me kindly to them and to M^r Rogers,¹ Mrs. Startin² and your sister Betsy — I hope now the spring is advancing you will visit Boston, I should be glad to see you or any of the family to whom I am bound by tender ties — My health is much as usual but my limbs fail me very much, thank God, I am free from acute pain, and the tenderness of my Children and knowledge of their welfare alleviates every mental pang — I should be glad to hear from you and thank you for your last kind letter which I ought to have notice'd before.

My kind regards to Mr Pearson whom I should be happy to see —
 I am with sincere

Esteem yours

MARY PELHAM.

¹ See post, p. 210, note 2.

² Mrs. Startin was Sarah Clarke, a daughter of Richard Clarke and sister of Mrs. Copley. She was born in Boston 9 April, 1750 (Boston Town Records), and was married to Charles Startin (ante, p. 200) 25 April, 1771 (Records of the Church in Brattle Square), their Intention of Marriage having been published on the thirteenth of March, preceding (Boston Town Records). Mr. Augustus T. Perkins, in A Sketch of the Life and a List of some of the Works of John

On the twenty-ninth of April, 1789, Mrs. Pelham died in Boston, having lived to see her sons Copley and Henry Pelham well established in their profession. Her sickness and death¹ are referred to in the following letter of her step-son and executor:—

Boston, May 1, 1790.

Sir, — On the 29th Ult^m M^r Pelham departed this Life, and on Monday next I purpose to entomb her, when was it practicable I should have been very glad of your Company, but fear whether this will reach you before the Funeral will [be] over. You know the state in which she has lain near Two Years, no great perceptible alteration took place till within these Two or Three months, in which time she grew gradually weaker and weaker till within a Week of her death when she sunk into a stupor suffering great pain and distress, then gave up life without any struggle: thus has the good old Lady left us, rather to congratulate than bemoan her deliverance from a very long and almost uninterrupted course of misery.

Singleton Copley (p. 100) describes Copley's unfinished portrait of Mrs. Startin, whom he erroneously calls "Sarah Copley, a sister of the artist." This error is corrected, however, in the supplement to Mr. Perkins's book (p. 14) which was subsequently issued separately. In Mrs. Amory's Life of Copley (p. 240) is a reference, under date of 1 March, 1803, to a drawing of Mr. Startin, and to a portrait of him which Copley was about to paint from it. A letter to Mrs. Startin, dated 20 July, 1797, from her nephew, John Singleton Copley, Jr., afterwards Lord Lyndhurst, is printed at length in Mrs. Amory's Life of Copley (pp. 170, 171), and is referred to in A Life of Lord Lyndhurst, by Sir Theodore Martin, p. 68.

¹ Her death and funeral were thus announced in the Boston Gazette, No. 1804, of Monday, 4 May, 1790:—

"Died.] On Wednesday last, Mrs. Mary Pelham, widow of Mr Peter Pelham, late of this town, and mother to Mr. Copley. Her funeral will be attended this afternoon, at Four o'clock, from her dwelling house, at New-Boston, when and where her, Mr. Copley's, and the family's friends and acquaintance are desired to grace the procession."

The Trinity Church Register of Burials contains this entry:—

"1790, May 4. Mrs. Mary Pelham, 78."

Mrs. Pelham's Will, dated 21 August, 1787, was proved 11 May, 1790. Her Executor was her step-son, Charles Pelham whom she charged to take care of the real estate in Boston belonging to her son Copley. Legacies were left to her Executor, to his daughter Harriot, — "my god-daughter," — to "my good friend Mercy Scollay," and to John Allen of Boston, tailor. The residue of the estate was equally divided between her sons John Singleton Copley and Henry Pelham, "both now resident in Europe." (Suffolk Probate Files, No. 18,208.)

There is in the house some pictures and Miss Scollay¹ thinks some other things belonging to you. I shall be glad you would send me an account of them, and your orders concerning them, which shall be observ'd with care and punctuality. My best regards wait on you, being

Sir

Your most obedient

hum' Serv²HENRY BROMFIELD, Esq^rCHA^r. PELHAM.

One of Copley's earliest portraits represents Mrs. Margaret (Fayerweather) Bromfield, the first wife of Henry Bromfield of Boston and of Harvard, Massachusetts. She was a daughter of Thomas Fayerweather, a Boston merchant, was born 19 March, 1732, and married Colonel Bromfield, 14 September, 1749.³ She

¹ This was Miss Mercy Scollay, whose gift of Henry Pelham's Maps of Ireland to the Historical Society was reported at a meeting held 17 August, 1796. (*1 Proceedings of the Massachusetts Historical Society*, i. 87.) Cf. Mrs. Amory's Domestic and Artistic Life of John Singleton Copley, R.A., p. 2.

Miss Scollay was the only unmarried daughter of John and Mary (Greenleaf) Scollay. She was born in Boston, 11 September, 1741 (Town Records), and died at Medfield, Massachusetts, 8 January, 1826, at the age of 84 years. (*Records of the Church in Brattle Square, Boston*; and gravestone at Medfield). Miss Scollay was betrothed to General Joseph Warren at the time of his death at Bunker Hill; and his two younger children were afterwards placed in her father's family under her "particular care . . . , at her most earnest request," during their minority. Miss Scollay's niece, Anna Wroe Scollay, married Charles Pelham Curtis (H. C. 1811), a grandson of Charles Pelham, the writer of the letter in our text. See letter of Samuel Adams in Frothingham's *Life and Times of Joseph Warren*, pp. 543, 544.

² Boston Town Records. Colonel Bromfield's second wife was Hannah Clarke, daughter of Richard Clarke, merchant of Boston, whom he married, 23 September, 1762 (*Records of the Church in Brattle Square*). Their daughter Elizabeth Bromfield, born 19 August, 1763, was married, in Cambridge, by the Rev. Abiel Holmes, 16 January, 1796, to Daniel Denison Rogers of Boston, the grandfather of the late Dr. Daniel Denison Slade (Boston Town Records; and Cambridge Town Records). John Singleton Copley, Jr., afterwards Lord Lyndhurst, was present at this marriage which was solemnized in the southwest parlor of the Holmes house then occupied by Professor Eliphalet Pearson.

Daniel Denison Rogers was born in Exeter, N. H., 11 May, 1751; married (1), 15 October, 1781, Abigail (born 11 April, 1758), daughter of Henry Bromfield (by his first wife), who died 7 October, 1791, without issue; married (2) her half-sister, Elizabeth Bromfield, as above stated. Copley painted a miniature of Mrs. Abigail (Bromfield) Rogers which is reproduced in the *New England Magazine* for March, 1800, New Series, ii. 12. Mr. Rogers died 25 March 1825, aged 74 years. (*New-England Historical and Genealogical Register* for 1861, v. 330; and for 1872, xxvi. 38, 39.)

died, of small pox, in Brookfield, Massachusetts, while on a journey for her health, 8 May, 1761.¹ This picture is owned by Miss Margaret Bromfield Slade, daughter of our late associate Dr. Daniel Denison Slade of Chestnut Hill, Massachusetts. The picture is not signed but, by tradition, has been known as the work of Copley.²

As we have already seen, Henry Pelham became Agent for Lord Lansdowne's estates in Ireland, and was drowned in the river Kenmare, in 1800,³ by the upsetting of a boat. His twin sons never married. One of them received an appointment under the Crown and died in the West Indies. Thus ended this line of the Pelhams.

Mr. ABNER C. GOODELL, Jr., referring to Mr. Gay's paper, read at the Stated Meeting in January, upon the engraving by Peter Pelham of the Smibert portrait of Sir William Pepperrell, which now hangs in the Essex Institute, said that, in commemoration of the capture of Louisburg, portraits were painted of Pepperrell, all in red, and of Admiral Sir Peter Warren, all in blue; and that both canvases hung in the Portsmouth Athenaeum till early in this century, when the Pepperrell picture was sent to Salem through the intervention of the late George Atkinson Ward.

¹ *New England Historical and Genealogical Register* for 1872, xxvi. 141.

² There can be little doubt that some of the canvases which, heretofore, have been classed as "early Copleys" are, in reality, the work of Henry Pelham. Pelham, however, was too young to have painted this portrait of Mrs. Bromfield.

An interesting letter written by Henry Pelham to Paul Revere, 29 March, 1770, accusing Revere of "dishonorable Actions" in copying Pelham's engraved plate of the so called "Boston Massacre," is printed in *2 Proceedings of the Massachusetts Historical Society* for May, 1893, viii. 237.

³ See ante, p. 204, note 1.



MARCH MEETING, 1898.

A STATED MEETING of the Society was held in the Hall of the American Academy of Arts and Sciences on Wednesday, 16 March, 1898, at three o'clock in the afternoon, the President, EDWARD WHEELWRIGHT, in the chair.

The Records of the last Stated Meeting were read and approved.

On behalf of Mr. DENISON ROGERS SLADE, who was unable to be present, Mr. Edes communicated the following letter, written by Lord Lyndhurst, when a young man of twenty-five, to Daniel Denison Rogers,¹ a wealthy merchant of Boston, and the great-grandfather of Mr. Slade:—

[London], April 19 [1797]
George st.²

MY DEAR SIR,—Agreeably to promise in my last letter via N. York I forwarded by the first Vessel to Boston the Deed signed by my father and mother³ in presence of two persons, Cap.⁴ Lovett⁵ master of the

¹ Mr. Rogers was connected by marriage with Copley through his wife's family—the Clarks. See ante, pp. 197, 198, 202 and 210, and notes.

² After his father's death, in 1815, Lord Lyndhurst continued to occupy the house in George Street, Hanover Square, until his own death, in 1863.

³ This instrument was dated 17 April, 1797, and is recorded with Suffolk Deeds, cxc. 168. On his visit to Boston,—where he arrived on 2 January, 1796,—the son brought with him a full power of attorney (not acknowledged) from his father, imperfectly dated—October, 1795. It is recorded *ibid.* clxxii. 182.

⁴ Captain Jonathan Herrick Lovett, the son of Captain John, 4th, and Elizabeth (Herrick) Lovett, was born 24 February, 1772, at Beverly, where he died 20 March, 1844. He married, 6 October, 1796, Nancy Lovett, by whom he had eleven children. He was an energetic and influential citizen of Beverly, where, having retired from the sea, he enjoyed the titles of Colonel and Deacon. Later in life he was an officer of the Customs, connected with the Port of Salem, and stationed in Beverly. (Beverly Town Records; and Augustus A. Galloups.)

1898.]

LETTER OF LORD LYNDHURST.

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Vessel and Cap.⁶ Henshaw⁷ Passenger who will prove the Signature upon their landing.

I do not very well recollect the Deed drawn by Lowell⁸ and can not therefore tell in what it was deficient, but sincerely hope that this will satisfy the parties.

It would perhaps have been better had they themselves sent the draught of a deed. Mrs.⁹ Mason¹⁰ & Otis¹¹ were to procure a general release from Bulfinch¹² & Scollay.¹³ You would much oblige me by reminding them of their promise & forwarding such releases to me.¹⁴

I scarcely know how to repeat my request respecting the trunk and dog which I left at M¹⁵ Wheelwright's.¹⁶ The trunk contains many things of value to me, chiefly books and papers; and the Dog¹⁷ is a particular favorite on account of the fair Donor. Any Vessel bound to London might bring them safe.

Any letters also which you may possess directed to me, you will be so kind as to enclose in a cover addressed to me at my father's—

I find that besides the books for Judge Lincoln,¹⁸ there was a case forwarded by my father containing two prints representing the Death of Major Pierson which I was to have presented in my father's name, one to Harvard College the other to the Academy of Arts¹⁹ at Boston of

¹ Joshua Henshaw.

² Jonathan Mason.

³ Charles Bulfinch.

⁴ John Lowell.

⁵ Harrison Gray Otis.

⁶ William Scollay.

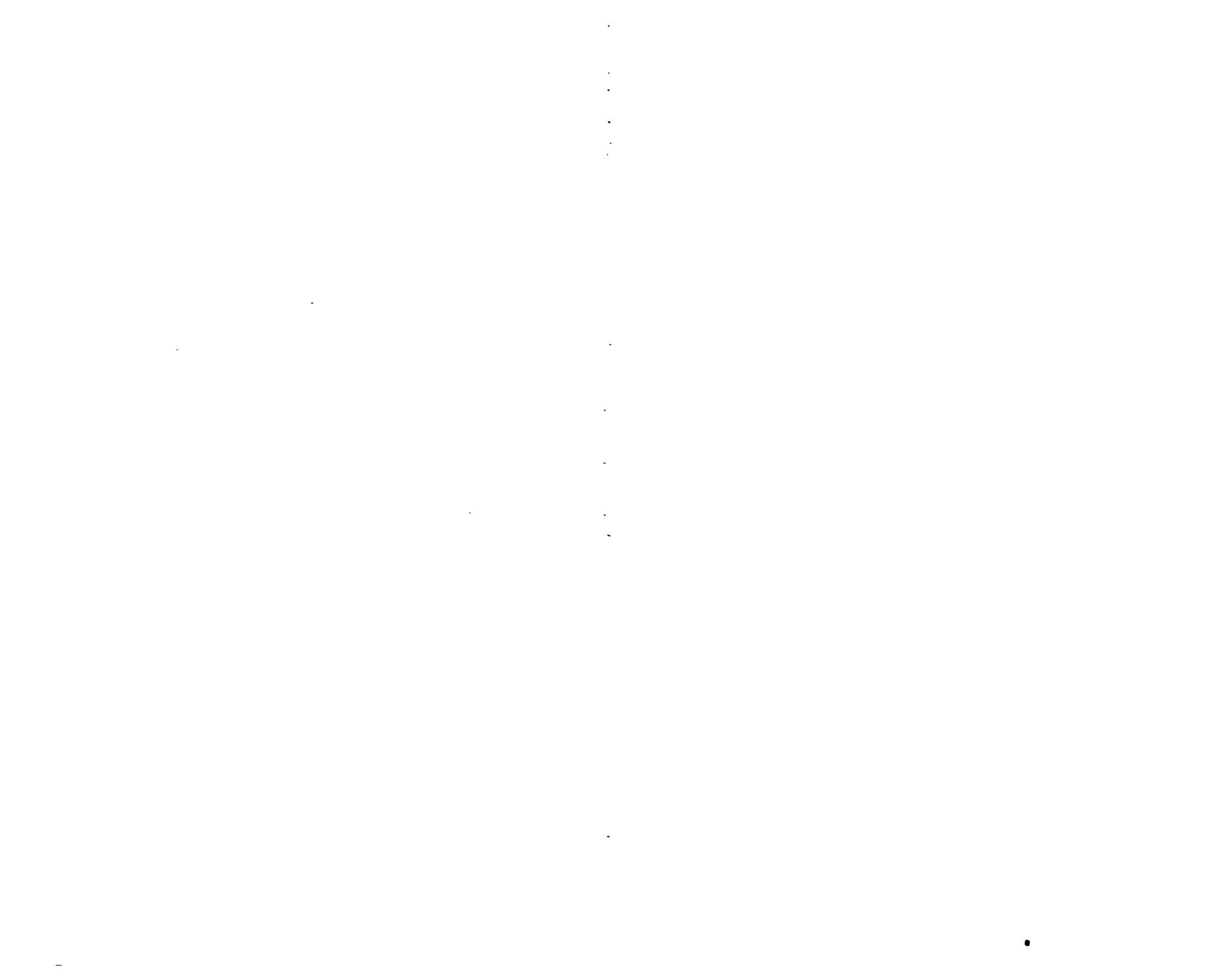
⁷ An interesting account of Copley's title to some twenty acres of land on Beacon Hill, of his sale of the property to Jonathan Mason and Harrison Gray Otis, and of the litigation which followed, may be read in the "Gleaner" articles, written by the late Nathaniel Ingersoll Bowditch, and reprinted in the Boston Record Commissioners' Reports, v. 183-203 (Second edition.) See ante, p. 208.

⁸ The identity of this woman has not been established. She may have been some connection of Jeremiah Wheelwright, Esq., whose land abutted on that of Copley. In *The Domestic and Artistic Life of John Singleton Copley*, R. A., Mrs. Amory devotes two chapters (viii. and ix.) to an account of young Copley's visit to Boston in the hope of recovering his father's estate on Beacon Hill, and his travels in America, in 1796. She mentions his attachment to a daughter of Bishop White, and prints many of his letters written during his sojourn in this country, whence he returned to London early in 1797.

⁹ See Mrs. Amory's *Domestic and Artistic Life of John Singleton Copley*, R. A., p. 188.

¹⁰ Probably Levi Lincoln (H. C. 1772.)

¹¹ The announcement of this gift, and of its receipt, was made at a meeting of the Academy held on the twenty-third of August, 1797, when a vote of thanks to Copley was passed.



which he is a member. May I request you to present them in my place?

I must also entreat to be remembered particularly to Mrs Rogers, Mr & Mrs Pearson¹ & Mrs Cabot²

I remain Dear Sir

Very sincerely yours

J. S. COPLEY, JR.

The Rev. EDWARD G. PORTER then said:—

MR. PRESIDENT,—I am glad our attention has been turned to this famous picture of Copley's, as it illustrates one of the most thrilling events in the history of the Channel Islands. I was in Jersey recently, and found that Pierson's gallant achievement was kept fresh in the minds of the people by various memorials of him at St. Hélier, and by the observance of the anniversary of his death. The quaint little square in which he fell remains very much as it was on the sixth of January, 1781. The Court House with its cupola, the plain brick dwellings with their tiled roofs, the gilt statue of George II. in Roman military dress, and the steep hill overhanging the town, are all seen in Copley's picture.

You remember the story. The French invaded the Island at dead of night and managed to get control of St. Hélier before the people were up, forcing the Lieutenant-Governor, Corbet, to sign a capitulation. When young Major Pierson, who was second in command, heard of this, he was indignant, and instantly refused to entertain the idea of a surrender. He rallied his troops about him, together with some of the Island militia, and rushed to the market-place where he made such an onslaught upon the invaders that they were completely routed with the loss of their commander; but Pierson fell in the moment of victory.³

¹ Elphilet and Sally (Bromfield) Pearson. See ante, p. 205, and note 4.

² Mrs. Samuel Cabot, young Copley's cousin, is here referred to. She was baptised, at the New North Church, Boston, 18 March, 1768,—the daughter of Samuel Barrett (H. C. 1757), LL.D., and Mary, daughter of Richard Clarke, whose Intention of Marriage was published in Boston, 25 August, 1761 (Town Records.) Samuel Cabot and Sarah Barrett were married, at the New North Church, by the Rev. John Eliot, 27 November, 1781.

³ It is said that at this critical point the troops began to waver, but soon recovered when they saw Philip Dumaresq, a well-known Lieutenant in the Jersey

With his usual sagacity Copley saw here the elements of a fine historical composition, and he spared no pains to make it as truthful and vivid as possible. It is considered by many his greatest effort, and it has happily found its proper place in the National Gallery.¹

The engraving by Heath,² to which allusion has been made, has long hung on the gallery-railing yonder,—as good a place as can be given it in this Hall; but it is in a poor light, and much too high to gain the attention it deserves.

To us the gem of the picture is the flight of the little group in the right hand corner, representing Mrs. Copley, with both hands upraised in terror, accompanied by her nurse with a babe in her arms, and the smart little Copley, Jr., running for dear life at her side.

I saw a copy of this painting, by Holyoake, in the Court House at St. Hélier, placed there in recent years. I found it a great help in reproducing the scene with all the accessories so near at hand. An inscription in the square marks the spot where Pierson fell. He was buried in the old Town Church near by.

I do not know whether others have observed in Trumbull's early battle-pieces any resemblance in spirit and treatment to this masterpiece of Copley, but I have often thought that several of the details in the Bunker Hill seemed to show an acquaintance with The Battle of Jersey.³

militia, spring to the post of danger. Thereupon they closed up and charged with such fury as to compel the speedy submission of the French.

A branch of this Dumaresq family has acquired distinction in our Boston annals. See New England Historical and Genealogical Register for 1863, xvii. 317-320; Heraldic Journal, iii. 97-104; and Foote's Annals of King's Chapel, ii. 147, note, 302, 363.

¹ The canvas was painted in 1783 for Alderman Boydell's gallery, and was bought by the Nation, in 1864, for 1600 guineas.

² An excellent engraving by Crew, with text, appears in Pictures and Royal Portraits Illustrative of English and Scottish History, by Thomas Archer, 1864, ii. 93, 94. A still smaller engraving by Warren adorns the title-page of a History of England by Hughes, 1855, vol. xvi. To accommodate his plate to the narrow space at his disposal the artist has, unfortunately, cut off the figure of Mrs. Copley on the right and several of the soldiers on the left.

³ As the Death of Pierson was painted in 1783, and the Death of Warren and the Death of Montgomery only two years later, it is quite possible that Trumbull found inspiration in Copley, though he was a pupil of West, and actually painted these great Revolutionary subjects in West's studio.

Mr. HENRY WILLIAMS, having been called upon by the President, spoke as follows :—

MR. PRESIDENT AND GENTLEMEN,—I offer for the acceptance of The Colonial Society of Massachusetts some leaves from the Charter Oak. I can vouch for their genuineness, for they were gathered for me sixty years ago last autumn, by my kinsman, Bishop John Williams, of Connecticut. I have taken a leaf from my old college herbarium in which they were preserved, and I have written underneath them the words which I wrote at the time on the opposite page :—

" Health to thee, ancient tree !
Hadst thou some spark of that garrulity
Belongs to ancient men ! "

It stirs the imagination to think what chronicles the Oak might have given us if Mrs. Sigourney's wish could have been realized; for its age when it fell has been estimated as high as eighteen hundred or two thousand years; while others have thought that it was, at that time, certainly one thousand years old. We may well believe this latter estimate. Mr. George B. Emerson, who classed this tree with the white oaks, says :—

" Those species of oak most analogous to our white oak, are known, in Europe, to continue to grow and flourish for centuries. There are oaks in Britain which are believed to have been old trees at the time of William the Conqueror. Some are known which are supposed to be one thousand years old."¹

Inasmuch as so well-known a writer as Professor Goldwin Smith² has thought, incredible as it may seem, to transplant the old Oak from Hartford to Providence, R. I., it may not be unprofitable to recall some facts in its history, as well as in that of the ancient Charter of Connecticut which, according to tradition, was concealed in its hollow in the time of Andros. Tradition has it that George Wyllis, — who was one of the fathers of the Connecticut Colony, of which he was Deputy Governor in 1641, and Governor in 1642, and who settled at Hartford, — before emigrat-

¹ Report on the Trees and Shrubs growing naturally in the Forests of Massachusetts, Boston, 1846, p. 124.

² The United States: An Outline of Political History, 1492-1871 (New York: Macmillan and Co., 1886), p. 24.

ing to America, sent over his Steward to select for him a site for his home in the wilderness. On the ground chosen by him stood the Charter Oak, which was then hollow and very old. It was held in great veneration by the Indians, and when Mr. Wyllis's agents were clearing the land for his residence, a deputation of the natives begged them to spare this aged tree. They said :—

" It has been the guide of our ancestors for centuries as to the time of our planting our corn. When the leaves are of the size of a mouse's ear, then is the time to put the seed in the ground."³

[Mr. Williams then recalled, briefly, the history of the Patent under which the Colony of Connecticut was planted, and described the events which led up to the successful effort to secure a new Charter.⁴ Continuing, he said :—]

There can be no surprise, therefore, that, at the period of the Restoration, the Connecticut Colony early took measures to secure from the King a Charter which should define their boundaries, and settle, once for all, their rights under their first Patent. In their Petition to King Charles they state, that the original copy of their Letters Patent "either by fire at a house where it had been sometimes kept, or some other accident, is now lost,"⁵ so that they were only able to furnish a copy of that document. Of all the noblemen named in these first Letters Patent, Lord Saye and Sele is said to have been one of only two or three survivors at the Restoration;⁶ accordingly, an earnest letter,⁷ dated 7 June, 1661, was addressed to him, invoking his good offices with His Majesty, Charles II., and his Parliament, in securing a Royal Charter which should protect them in the rights for which they had so long struggled. There were some circumstances at the time which seemed unfavorable to the success of their Petition. There was a

¹ Hollister's History of Connecticut, i. 323.

² There is an excellent account of the planting of Connecticut, and of the first Patent, in Palfrey's History of New England, i. 450 et seq. The text of the Patent may be read in Trumbull's History of Connecticut (i. 495, 496), where also may be found (i. 497 et seq.) the text of other original papers pertaining to the settlement and early government of the Colony.

³ Trumbull's History of Connecticut, i. 511.

⁴ Palfrey's History of New England, iii. 533.

⁵ This Letter is printed in Trumbull's History of Connecticut, i. 511, 512.

hot pursuit of the Regicide Judges both in England and on this side of the Atlantic. Goffe and Whalley and Dixwell at first appeared openly in the Massachusetts Colony, but they were afterwards obliged to go into hiding in Connecticut, where they were harbored by the Rev. John Davenport.¹ It was known that they had fled thither, although they had successfully baffled their pursuers. This was made use of by the enemies of the Colony in England to prejudice their claims, but unsuccessfully, for Lord Saye and Sele was a stanch friend and a vigorous advocate in their behalf; and, fortunately for them, he had advocated Charles's restoration, for which he had been made Lord Privy Seal.² John Winthrop, who had been sent over to England as a special agent to urge the Petition of the Colony, was enabled, through the influence of Lord Saye and Sele, to enlist in their behalf the sympathy of the Earl of Manchester, who was Lord Chamberlain in His Majesty's household.³ Under these circumstances the Petition of Connecticut was presented, and was received "with uncommon grace and favor,"⁴ and on the twenty-third of April, 1662, the famous Char-

¹ Much interesting matter relating to the Regicides, consisting of letters, papers, and biographical notices of the Regicides themselves and of their correspondents, is contained in the Mather Papers (4 Massachusetts Historical Collections, viii. 122-225 and notes.) Dr. Palfrey has given a full and accurate account of the three Regicides who fled to these shores, and of their life here (History of New England, ii. 495-500, and notes.) See also Stiles's History of the Three Judges.

² A full account of William Fiennes, first Viscount Saye and Sele (1582-1662), and of his remarkable career is to be found in Leslie Stephen's Dictionary of National Biography, xviii. 433-436.

³ Edward Montagu, second Earl of Manchester (1603-1671), was a conspicuous figure in the history of his time. Early in his career he inclined to the Puritan side, and, for a time, co-operated with Cromwell. He opposed the Trial of Charles, however, and although summoned by the Protector to the Upper House he refused attendance, and retired from public life during the Commonwealth. He "took an active part in bringing about the Restoration, and, as Speaker of the Lords welcomed the King on his arrival" in London, 29 May, 1660. In the following October he took part in the Trial of the Regicides; and at the Coronation of Charles II., 23 April, 1661, he bore the Sword of State. The Earl was the recipient of many and great honors; having been made a Privy Councillor, Knight of the Garter, Chancellor of the University of Cambridge, and Fellow of the Royal Society. (*Id. xxxviii. 230.*)

⁴ Trumbull's History of Connecticut, i. 248.

ter was granted by Letters Patent under the great seal of England.¹ This Charter —

"continued in force to the time of the Revolution, and saved Connecticut from experiencing the fate to which Massachusetts was subjected, after the loss of its First Charter privileges, of a dependent province. It remained, in fact, the constitution of the State of Connecticut until 1818."²

[Mr. Williams then sketched vividly the events which occurred after the accession of James II., referring especially to the loss of corporate charters — including that of the City of London — and to the proceedings against those of the New England colonies by writs of Quo Warranto and Scire Facias. He also gave a rapid review of the high-handed proceedings of Randolph and Andros, and recalled the tradition connected with the concealment of the Connecticut Charter.³ In closing, Mr. Williams said: —]

In 1827, Charles Sprague, the poet, writing to Mr. Buckingham, the editor of *The Boston Courier*, says: —

"While in Hartford . . . I was guilty, for the first time, of paying my devotions to the ancient and venerable *Charter Oak*, from which 'I piously stole' three leaves and an acorn."⁴

At that time and ten years later, in 1837, when these leaves were sent to me, the Oak was apparently flourishing; but during a violent storm, on Thursday, the twenty-first of August, 1856, the tree was blown down.⁵ There are several pictures of it, — one in

¹ The full text of the Charter is in Hazard's State Papers, ii. 507-505.

² Charles Wentworth Upham, in his Lecture delivered in a course before the Lowell Institute, in 1860, by members of the Massachusetts Historical Society, p. 241.

³ The story of the visit of Andros to Hartford for the purpose of assuming the Government of Connecticut, in October, 1687, and of the mysterious disappearance of the Charter and its concealment in the Charter Oak, are fully related and discussed by Dr. Palfrey in his History of New England, iii. 543-545, and notes, where it is erroneously stated, however, that the Tree fell on the twentieth of August.

⁴ Joseph T. Buckingham's Personal Memoirs and Recollections of Editorial Life, i. 194.

⁵ The tree fell at 12.50 o'clock in the morning. (*Connecticut Courant*, Hartford, No. 4779, of Saturday, 23 August, 1856, which contains a full account of the public expressions of sorrow.)

Emerson's Trees of Massachusetts,¹ but it was taken before the days of kodaks and snap shots, and it does not give a correct idea of its great size. A few years before it fell, twenty-seven good-sized men are said to have stood in the hollow of its trunk. About the same time some boys built a fire in this cavity, and it was feared that this would be the end of the venerable tree; but, as great pains were taken to preserve it, it survived a few years longer, and when it was blown down fresh acorns were growing on many parts of it. There was a universal feeling of regret among the citizens of Hartford when the tidings spread that their ancient, historic tree had at last fallen. At noon Colt's Armory Band played a dirge on the spot, and at sundown, throughout the city, the bells were tolled, to give expression to the common sorrow.

I do not know how it may be with others, Mr. President, but these visible, tangible memorials of the past,—such as the leather pouch of bullets which was found, long after the American Revolution, concealed among the rafters of an old church in Lincoln,—the sight of which would quicken the pulse of any antiquary, and which were brought here by our associate, Mr. Porter, to illustrate his graphic paper on the march to Lexington and Concord and the retreat to Boston, on the eighteenth and nineteenth of April, 1775,—touch me more nearly than many a page of the printed record. And so these faded leaves, which carry us back through all the struggles of the Connecticut Colony and to a dim and uncertain antiquity beyond,—long before the white man set his foot on these shores,—may find a place in our Cabinet, and have an interest in the future, which may make them worthy of the Society's acceptance.

Mr. HENRY H. EDZS said that he had in his possession the original Search Warrant for the arrest of the Regicides, issued by the Connecticut authorities on the eleventh of May, 1661, and the original Third Writ of Quo Warranto against the Connecticut Charter; and that he should have been glad to

¹ A Report on the Trees and Shrubs growing naturally in the Forests of Massachusetts, originally published agreeably to an order of the Legislature by the Committee of Zoological and Botanical Survey of the State (Second edition, 1875), I. facing 148.

1806.]

EARLY LETTER OF WASHINGTON.

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bring them to this meeting for the inspection of the members, had he known beforehand the subject of Mr. Williams's paper.

MR. S. LOTHROP THORNDIKE communicated the following early letter¹ of Washington, hitherto unpublished:—

DEAR MADAM,—When I had the happiness to see you last, you express'd an inclination to be informed of my safe arrival in camp with the charge that was entrusted to my care; But at the same time desired it might be communicated in a Letter to somebody of your acquaintance: This I took as a gentle rebuke, and polite manner of forbidding my corresponding with you; and conceive this opinion is not illy founded, when I reflect that I have hitherto found it impracticable to engage one moment of your attention. If I am right in this, I hope you will excuse the present presumption, and lay the imputation to slateness at my successful arrival: If on the Contrary these are fearful apprehensions only, how easy is it to remove my suspicions, enliven my spirits, and make me happier than the Day is long; by honouring me with a correspondence which you did once partly promise to do.—please to make my Compliments to Miss Hannah, and to M^r. Bryan to whom I shall do myself the pleasure of writing, as soon as I hear he is returned from Westmoreland. I am Madam

Y^r most Obed^t. yr most H^m. Serv^t.

G^r. WASHINGTON.

Fort Cumberland at Wills Creek }
7th of June, 1755. }

MR. THORNDIKE also communicated the following paper:—

Memorandum by Mrs. Burton N. Harrison.

Letter written by Col. George Washington to Mrs. Sarah Fairfax at Belvoir on the Potomac, adjoining Mt. Vernon,—the seat of Col. William Fairfax of Yorkshire, England, then President of the King's Council in Virginia, and first cousin of the sixth Lord Fairfax of Greenway Court. Mrs. Fairfax, a beautiful and brilliant woman, was beloved by Washington in his boyhood — she being two years his senior — and,

¹ In The Ladies' Home Journal (Philadelphia) for March, 1806, xiii. 2, 30, is an extract from a letter from Washington to Mrs. George William Fairfax of the same date as that in our text, but in some places quite different in forms of expression.

at eighteen,¹ married George William Fairfax, eldest son of Col. William Fairfax of Belvoir and heir expectant of the Fairfax title, which, however, he died before inheriting, — the title passing from the sixth Lord to his brother Robert of Leeds Castle, seventh Lord, thence to Bryan Fairfax, youngest son of William of Belvoir, to whom it was confirmed by Parliament in 1800. Bryan's great-grandson, John Contee Fairfax of Prince George County, Maryland, is the present and eleventh Lord Fairfax.

Sarah Fairfax was one of the four beautiful Miss Carys of Cecils on the lower James, daughters of Col. Wilson Miles Cary, of whom Anne married Robert Carter Nicholas (their daughter married Edmund Randolph), Mary married Edward Ambler, and Elizabeth, the youngest, married Bryan, eighth Lord Fairfax.

A letter from Washington to his early love, dated Mount Vernon, May 16th, 1798, may be found in Sparks's Washington's Writings.² With her husband, Mrs. Fairfax had gone to live in England, where George William Fairfax inherited his grandfather's Yorkshire property. She died at Bath, England, [2 November,] 1811, [aged 81.] George William Fairfax having died there, in 1787, both are buried in Writhlington Church, near Bath.³

With this Washington letter of June 7, 1755, to Sarah Fairfax, was one addressed to Col. William Fairfax of Belvoir, announcing the young Colonel's safe arrival in camp with the £4000 he had carried under guard from Williamsburg for the use of the troops.⁴ "Miss Haanah" was the youngest daughter of Col. Fairfax of Belvoir. She married Warner Washington.⁵

These facts are contributed to Mr. Thorndike by the great-grandniece of Sally and Elizabeth Cary upon her father's side, also great-granddaughter of Bryan, eighth Lord Fairfax,⁶ through her mother.

CONSTANCE CARY HARRISON.

New York, February 18, 1889.

¹ They were married 17 December, 1748.

² Sparks's Life and Writings of Washington, xi. 232.

³ Fairfax died 3 April, 1787 (Neill's Fairfaxes of England and America, p. 212.) The church at Writhlington, Somersetshire, is dedicated to St. Mary Magdalene. Fairfax was born in the Bahamas, in 1724.

⁴ This letter is printed, *Ibid.* ii. 77; see also i. 63.

⁵ Warner Washington, eldest son of John, the eldest son of Lawrence Washington, was cousin-german to George Washington, who was son of Augustine and grandson of Lawrence Washington. (Sparks's Life and Writings of Washington, i. 542, 549; ii. 58, note.)

⁶ For an account of the Fairfax family see Sparks's Life and Writings of Washington, i. 13 et seq.; ii. 51-54, notes, 182, note; and Neill's Fairfaxes of England and America.

1806.] WASHINGTON'S ATTACHMENT FOR SALLY CARY. 223

Mr. HENRY H. EDGES called attention to an article written by Mrs. Harrison in 1876,¹ in which she speaks of Washington's attachment for Sally Cary: —

"The chroniclers of the Fairfax family have always asserted positively that to this one of the Miss Carys, [Sally] la belle des belles, Washington offered his heart and hand, to be finally superseded by his friend and comrade, Fairfax of Belvoir.

"Irving gives a different version of this story, asserting that Washington's tendresse was for the younger sister of Mrs. George William Fairfax, whom the bride brought back with her on a visit to Belvoir. Bishop Meade, quoting from a paper of the Ambler family, says that the sister whom Washington sought in marriage was Mary Cary, afterward married to the wealthy Edward Ambler, Collector of York River, and owner of Jamestown Island. In the face of this distinguished controversy, we can only continue the story of Washington's wooing, as it has been handed down to us. When the young gentleman mustered up his courage at last to ask for the lady's hand, Colonel Cary flew into a great rage, and answered that, if that was his business, he might as well 'go away the same as he came' (*vide* Sally's diary), for his daughter had been accustomed to ride in a coach and four."

In a footnote Mrs. Harrison adds the following interesting statement: —

"It is fair to say that papers which have never been given to the public set this question beyond a doubt. Mrs. George William Fairfax, the object of George Washington's early and passionate love, lived to an advanced age in Bath, England, widowed, childless, and utterly infirm. Upon her death, at the age of 81, letters, still in possession of the Fairfax family, were found among her effects, showing that Washington had never forgotten the influence of his youthful disappointment."

From a recent correspondence with Mrs. Harrison and her husband, it appears that she has modified her opinion, in some respects, as will be seen by the following extract from Mr. Harrison's letter:

¹ A Little Centennial Lady, by Constance Cary Harrison, in Scribner's Monthly Magazine for July, 1876, xii. 309, 310. Mrs. Harrison contributed another interesting article on Sally Cary, entitled A True Colonial Dame, to The Ladies' Home Journal for March, 1886, xiii. 2, 30. Cf. Conway's Barons of the Potomac and the Rappahannock, pp. 91-96, 270, 271.

"There is no evidence that George Washington ever saw Sally Cary until after she had become the wife of his friend George William Fairfax who had himself, probably, met her in Williamsburg when he was a member of the House of Burgesses. There is no evidence that George Washington was in Williamsburg, or anywhere on the "Lower James," prior to Sally's marriage; and she, quite certainly, was never north of the Rappahannock River before she came to Belvoir as a bride. And, though my wife was once of the contrary opinion, she now asks me to say to you that she has come to believe she was then in error."

There can be no doubt, however, of Washington's attachment to Mrs. Fairfax, albeit it began after her marriage to his friend, and the letter which Mr. Thorndike has just read to us, to say nothing of those unpublished letters of later date of which Mrs. Harrison writes, bears eloquent testimony to the truth of this statement.

Mr. Edes then exhibited an original letter of Martha Washington to General Knox, and the General's reply. They are as follows:—

M^r Washington presents her compliment
-nts to General Knox and begs his
acceptance of two hair netts.—They
would have been sent long ago but
for want of tape, which was necessary
to finish them, and which was not
obtained till yesterday.—

Newburgh March the 6th 1783

General Knox, has the honor, to
present his most respectful compliments,
to M^r Washington, and to assure her
he is deeply impressed with the sense of
her goodness, in the favor of the hair-nets,
for which he begs her to accept of his
sincere thanks.

West point 6th March '83.

Mr. APPLEYARD P. C. GRIFFIN, whose official duties in Washington prevented his attendance, communicated, through

Mr. Edes, a copy of a part of Washington's Military Record, now in the War Department, giving the Muster Rolls of troops raised, in 1778, in the Counties of Berkshire, Worcester, and York, in the State of Massachusetts.¹

Mr. ALBERT MATTHEWS read the following paper:—

HIRED MAN AND HELP.

An English traveller, alluding to this country, remarked, in 1820:—

"There are also some expressions the original applications of which I have not been able to discover. These I must call Americanisms, and will subjoin some examples. . . . Hired Girl for Servant Girl. Hired Man for Servant Man."²

More recently Dr. Fitzedward Hall, writing on the term "hired man," said:—

"Of this expression, a strange seeming one, its meaning considered, what is the history? Ordinarily, I believe, it is regarded as a euphemism; and such it now is, unquestionably. It appears, however, to have been, with us, originally, something quite different. . . . I hardly doubt that [proof can be adduced] that Hired women, Hired boys, etc., also were somewhat as rife in the language of our colonial forefathers as they are in the language of their descendants. How such locutions found their way into our phraseology is a question which awaits solution."³

Dr. Hall added that both Dr. Murray⁴ and Professor Wright⁵ were unable to lend him "any assistance, as regards quotations, in connection with the terms" he was discussing. An appeal on the part of the present writer to various philological, historical, and genealogical scholars has met with a similar result, no one being able to furnish him with a single quotation illustrative of American usage. By again calling attention to the term, it is hoped that

¹ This valuable communication is reserved for publication in a volume of the Society's Collections.

² J. Flint's Letters from America, 1822, p. 204.

³ The Nation, 20 February, 16 April, 1886, liii. 157, 206.

⁴ Editor-in-chief of The Oxford English Dictionary.

⁵ Editor of The English Dialect Dictionary.

other investigators may be able to adduce fresh evidence which shall confirm or modify the conclusions expressed in this paper.

The word "servant" appears to have, at the present day, in this country four meanings:—

(1) Legally, "a servant is one who is employed to render personal service to his employer otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter."¹

(2) A public official of high standing may call himself "a servant of the people," or "a public servant."

(3) A religious man is called "a servant of the Lord."

(4) The word is applied to a man or a woman in domestic service.

The first three meanings do not enter into common speech, so that practically it is the fourth meaning only which is employed in ordinary language. If, however, we turn to the Colonial period, we find a widely different state of affairs. Then the word was applied not only to domestic servants but also to laborers, mechanics, apprentices, schoolmasters, secretaries, clerks, articled students in a lawyer's or doctor's office, and to Indian, negro, and other slaves. The usual terms were "servant man" or "man servant" or "man," "servant woman" or "woman servant," "servant maid" or "maid servant" or "maid,"² "servant girl" or "girl,"³ "servant lad" or "lad," "servant boy" or "boy." Domestic servants were few throughout the Colonial period, and in the vast majority of cases those designated as servants were employed in other than domestic labor.⁴

¹ The American and English Cyclopaedia of Law, 1890, xiv, 745.

² Though now employed euphemistically, "maid" and "girl" appear to have been, during the Colonial period, merely shortened forms of "maid servant" and "servant girl," respectively. See, under dates of 1649, 1665, 1724, 1735, 1782, 1783, 1784, the New England Historical and Genealogical Register, 1849, iii, 182; Boston Record Commissioners' Reports, 1881, vi, 202; the New England Historical and Genealogical Register, 1862, xvi, 65; New Jersey Archives, 1894, xi, 425; J. J. Babson's Notes and Additions to the History of Gloucester, Part II., 1891, pp. 27, 29, 31, 35.

³ Such advertisements as the three which follow were common in the Colonial newspapers:—

"Just arrived from Aberdeen. A Parcel of Hairy Scotch Servant Men, some Tradesmen, but all accustomed to Husbandry and Country Work; whose Times are to be

It does not appear that any social stigma was implied in the use of the word servant. Mr. J. C. Ballagh, speaking of the white servant in Virginia, writes:—

disposed of by Alexander Gordon." (Pennsylvania Gazette, 21-22 October, 1734, p. 4/1.)

"Just arrived . . . Servant Boys and Girls, . . . among which are Hatters, Taylors, House Carpenters, Joiners, Barbers, &c." (*Ibid.*, 6 October, 1768, p. 3/3.)

"Arrived from Ireland, The Ship King of Prussia, Arthur Darley, Master:—Has on board Thirty SERVANTS, some Tradesmen, as Taylors, Shoemakers, Smiths, Weavers, &c. the remainder Country Lads that understand Farming Business." (Massachusetts Gazette, 5 October, 1769, p. 4/1.)

The following extracts, relating to Schoolmasters, are both curious and interesting:—

Abstract of the will of J. Carter, dated 3 January, 1669: ". . . my son Robert, in his minority is to be well educated for the use of his estate, and he is to have a man or youth servant bought for him, that hath been brought up in the Latin School, and that he (the servant) shall constantly tend upon him, not only to teach him his books, either in English or Latin, according to his capacity (for my will is that he shall learn both Latin and English, and to write), and also to preserve him from harm and from doing evil." (Virginia Magazine of History and Biography, 1894, ii, 236.)

In an account drawn up, in 1750, by the Trustees of the Philadelphia Academy (now the University of Pennsylvania), we read:—

"The Benefits expected from this Institution, are: . . . 3. That a Number of the poorer Sort will hereby be qualified to act as Schoolmasters in the Country, to teach Children Reading, Writing, Arithmetic, and the Grammar of their Mother Tongue; and being of good morals and known character, may be recommended from the Academy to Country Schools for that purpose; The Country suffering at present very much for want of good Schoolmasters, and obliged frequently to employ in their Schools, vicious imported Servants, or concealed Papists, who by their bad Examples and Instructions often deprave the Morals or corrupt the Principles of the Children under their Care." (Minutes of the Common Council of the City of Philadelphia, 1847, pp. 527, 528.)

In a sermon preached in 1773, the Rev. Jonathan Boucher said:—

"What is still less credible is, that at least two thirds of the little education we receive are derived from instructors, who are either INDENTED SERVANTS, or TRANSPORTED CRIMONS. . . . When I said that two thirds of the persons now employed in Maryland in the instruction of youth were either indentured servants or convicts, the assertion was not made quite at random, nor without as much previous authentic information as the nature of the case would admit of." (A View of the Causes and Consequences of the American Revolution, 1797, pp. 183, 184, 185.)

In 1841, the Rev. J. W. Alexander wrote:—

"It was customary in Virginia for white men to indenture themselves to the captains, for four years. My grandfather used to go to Baltimore and buy such. Two of my father's early schoolmasters were well educated Englishmen of this class." (Forty Years' Familiar Letters, 1890, i, 325.)

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Mens. At the North the word 'help' as applied especially to women superseded the word 'servant,' while at the South the term 'servant' was applied only to the negro. From the time of the Revolution, therefore, until about 1850 the word 'servant' does not seem to have been generally applied in either section to white persons of American birth. Since the introduction of foreign labor at the middle of the century, the word 'servant' has again come into general use as applied to white employees, not, however, as a survival of the old colonial word, but as a re-introduction from Europe of a term signifying one who performs so-called menial labor, and it is restricted in its use, except in a legal sense, to persons who perform domestic service. The present use of the word has come not only from the almost exclusive employment of foreigners in domestic service, but also because of the increase of wealth and consequent luxury in this country, the growing class divisions, and the adoption of many European habits of living and thinking and speaking.¹

During the Colonial period the word "servant" was applied to two altogether distinct classes,—to those who served for a term of years, and to those who served for life, or in other words to slaves. The former consisted of white persons of European blood; while the latter comprised Indians, negroes, mulattoes, and persons of mixed blood. Thus used by itself, the word "servant" was ambiguous; and where ambiguity might arise, we find the word qualified by the adjective "white,"—"white servants" being repeatedly alluded to in Colonial legislative acts and writings, though occasionally the phrases "English servants" and "Christian servants" occur. It is sometimes stated that felons and political offenders were transported to the American Colonies to be sold into slavery; but the idea that they were so sold appears to be a misapprehension. Before the middle of the seventeenth century, a writer remarked:—

¹ *Domestic Service*, 1887, pp. 68-72. In a letter to the present writer, Miss Salmon adds:—

"With the sudden burst of new political life that came as a result of the Declaration of Independence and the economic changes that came through the substitution at the South of black slaves for white redemptioners, the word 'servant' fell into disuse. It is at this time, subsequent to the Declaration of Independence, that the words 'help,' 'blow girl,' 'blow man,' come into use. They are used as substitutes for the word 'servant'—an incongruous term in the face of a declared equality of all men, and an abominable term in view of the services performed at the South by negro slaves."

"Malitious tongues hath impaired it much: For it hath beene a constant report amongst the ordinary sort of people, That all those servants who are sent to Virginia, are sold as slaves: whereas the truth is, that the Merchants who send servants, and have no Plantations of their owne, doe onely transfeare their Time over to others, but the servants serve no longer then the time they themselves agreed for in England."²

"Their Servants," wrote Robert Beverley, in 1705, "they distinguish by the Names of Slaves for Life, and Servants for a Time. Slaves are the Negroes, and their Posterity, following the condition of the Mother, according to the Maxim, *partus sequitur ventrem*. They are call'd Slaves, in respect of the time of their Servitude, because it is for Life. Servants, are those which serve only for a few years, according to the time of their Indenture, or the Custom of the Country. The Custom of the Country takes place upon such as have no Indentures."³

And in 1724, the Rev. H. Jones, speaking of felons, "whose Room they had much rather have than their Company," said:—

"Their being sent thither to work as Slaves for Punishment, is but a mere Notion, for few of them ever lived so well and so easily before, especially if they are good for anything."⁴

But though only servants of mixed blood were slaves, yet white servants were not freemen.⁵ When the term of service of a white servant expired, he received a certificate of discharge and his "freedom dues";⁶ the receipt of these constituted him a freeman, and thenceforth he was at his own disposal. An examination of

² W. Bellock's *Virginia Impartially Examined*, 1649, pp. 13, 14.

³ *History of Virginia*, 1705, book iv., chapter x., p. 35.

⁴ *Present State of Virginia*, 1724, pp. 53-54. Compare, also, the following, under date of 1740:—

"The Case of Felons transported by Acts of Parliament may differ from Apprentices and Servants in some Things; Felons are bound to serve by the Justice where they are convicted for such a Term of years as the Act directs; other Servants are obliged to serve for no longer time than they contract; but both are equally the Property of their Masters during the Time they have to serve (as we are informed), if an Act of Parliament can make them so." (*Pennsylvania Colonial Records*, 1681, iv. 484.)

⁵ In some Colonies a man, in order to vote or hold office, had to be made a Freeman, and in order to become a Freeman he must produce evidence that he was a member of some Congregational church. I do not see the word "Freeman" in this restricted sense, but by it mean merely a man who is free.

⁶ These consisted sometimes of land or money, but generally of clothes and farming implements.

the Colonial legislation relating to white servants seems clearly to show that a distinction was made between a "hired servant" and an "indentured servant." Indented servants served not for wages but by covenant or indenture, and were variously called "covenant servants," "indentured servants," or, usually, "indentured servants." On the other hand, servants who served for hire or wages were termed "hired servants." Thus there were three classes of servants, — slaves, indentured servants, and hired servants. Let us now turn to freemen. A freeman might be a planter doing his own work himself, with the aid of his family; or he might be the employer of labor; or he might hire himself out to another freeman. In this last case he became a "hired freeman" or a "hired man." If, then, my interpretation of Colonial legislation is correct, the work of settling and of opening up this country, during the Colonial period, was performed by four classes of persons: — First, the freeman, who, when he hired himself out, was called a hired freeman or a hired man; Secondly, the servant who, when he served for a term of years for wages, was termed a hired servant; Thirdly, the servant who, when he served for a term of years by covenant or indenture, was called a covenant or indentured or indentured servant; and Fourthly, the servant who, when he served for life, was termed a slave.

With the outbreak of the Revolutionary War the Colonial system of white servitude began to fall into decadence,¹ and gradually there came to be but two classes — freemen and slaves. In the examples which follow it will be seen that before 1776 the term "hired man" was purely a descriptive one, there not being the slightest indication of its having been employed in a euphemistic sense; and in many of the examples between 1776 and 1863, the term is still merely a descriptive one, distinguishing the person so designated from a slave. When, as a consequence of the dislike to the word "servant," a euphemistic substitute for the hated appellation was desired, the terms "hired man," "hired woman,"

¹ As late as 1817 we find S. Brock writing, presumably from Philadelphia: —

"Being a long time disengaged with some of my servants, I went on board the ship John from Amsterdam, lately arrived with four hundred passengers, to see if I could find one for Mrs. Ross and two for myself. I saw the remains of a very fine cargo, consisting of healthy, good-looking men, women and children, and I purchased one German Swiss for Mrs. Ross and two French Swiss for myself." (*Recollections*, 1877, pp. 204, 207.)

"hired girl," "hired boy," etc., (of which — except the first — there is absolutely no trace before 1776) came into vogue, and have remained in use as survivals, even though, since 1863, they have lost all significance as descriptive terms.

The following extracts illustrate the use of the term "hired man": —

American Examples.

"Memorand, the xxvth of May, 1639: That Robt Eldred, the hyred servant of Nicholas Sympkins for the terme of three yeares from about the of July next for 4^l p ann. & an ewe goat at thend of his tyme. The said Nicholas Sympkins . . . hath, w^t and by the consent of the said Robt Eldred, assigned & set over the said Robt Eldred vnto the said M^r Thomⁿ Prence, to serve him all the ramaynder of the said terme."¹

"Allways provided that if any such runaway servants or hired free-men shall produce a certificate, wherein it appears that they are freed from their former masters service or from any such ingagement respettively, if afterwards it shall be proved that the said certificates are counterfeit then the retayner not to suffer according to the penalty of this act."²

"It is Enacted by this present assembly That whosoever being a Servant by Indenture Shall Convey himself or herself out of the Service of his or her master, mistres or Dame by running away or Departing privately out of the s^t Service, shall Double the time of his or their absence over and above the Damages and Cost to be adjudged by the Court . . . And any hired Servant so Departing from Service as afores^t shall double the time of his or her unlawfull Departure & absence to his or her s^t master or Dame, over & above the Damages and Costs . . . to be adjudged by the Court, . . . And any one which shall Transport any hired or Covenant Servant out of the Province shall pay Double Cost & Damage to the party Grieved for such Servants absence out of the Province, And every hired Servant or Apprentice that shall

¹ 1639, Plymouth Colony Records, 1855, I. 122.

² 1643, Virginia Statutes at Large, 1822, I. 254. Similar Acts were passed in Virginia in 1658, 1662, 1669, and 1670, the term "hired freeman" occurring in those of 1658, 1662, and 1669. They are the only examples of the term known to me. Mr. P. A. Bruce writes me: —

"A 'hired freeman' I take to have been one who had been a servant or had always been free. 'Freeman' is a term used in contradistinction to 'servant.' It means a man who is free now, irrespective of his former condition."

absent himself out of the Service of his or her master or Dame, & During such absence shall be resident within this Province shall double the time of his or her absence of Service to his or her master or Dame."¹

" And bee itt enacted . . . That noe peon whatsoever shall trade Barter Commerce or Game w^t any Serv^t (except hired Serv^t) w^tin this province w^t out Lyceance first had & obteyned from his or her M^r M^r Dame or Overseare, vnd^t the penalty of Two Thousand pounds of Tobacco."²

" . . . you are also required to take a list of the names of those young persons within the bounds of your Town, and all adjacent Farme though out of all Town bounds, who do live from under Family Government, viz. do not serve their Parents or Masters, as Children, Apprentices, hired Servants, or Journey men ought to do, and usually did in our Native Country, being subject to their commands and discipline."³

" And be it further Enacted, . . . That no Person whatsoever, shall trade, barter, commerce, or any Way deal with any Servant, whether hired, or indented, or Slave, belonging or appertaining to any Inhabitant within this Province, without Leave or Licence first had and obtained from such Servant's Master, Mistress, Dame or Overseer, for his so doing, under the Penalty of Two Thousand Pounds of Tobacco."⁴

" And be it further Enacted . . . That if any Servant or hired Labourer shall lay violent Hands, or beat or strike his or her Master, Mistress or Overseer, and be convicted thereof by Confession or Evidence of his Fellow Servant, or otherwise, before any two Justices of the Peace in this Province, the said Justices of the Peace are hereby required and authorized to order such Servant or Labourer to serve his or her Master or Mistress, or their Assigns, any Time not exceeding Six Months without any Wagea, after his or her Time by Indenture or otherwise is expired, or such corporal Punishment to be inflicted by the Hands of the Constable, or some other white Person, not exceeding Twenty one Stripes, as they shall in their Discretion think fitting, according to the Nature of the Crime."⁵

" Be it therefore enacted . . . That every master of any outward bound ship or vessel that shall hereafter carry or transport out of this

¹ 1654, Archives of Maryland, Proceedings and Acts of the General Assembly, 1638-1664, 1663, pp. 348, 349.

² 1662, *Ibid.* p. 500.

³ 1663, Colonial Laws of Massachusetts, 1680, p. 260.

⁴ 1715, T. Bacon's Laws of Maryland at Large, 1765, chapter xiv. § 10.

⁵ 1717, N. Trott's Laws of the Province of South Carolina, 1794, I. 212, 214.

province any person under age, or bought or hired servant or apprentice, to any parts beyond the seas, without the consent of such master, parent or guardian, signified in writing, shall forfeit the sum of fifty pounds."¹

" RUN away the 9th Inst. from James Norrel of Oley in this County, an hired Servant Man named John Blowden, well set, of short Stature, black Hair, fair Complexion, and has a smooth Tongue. . . . He pretends to be a Doctor, sometimes a Gentleman or a Merchant, and endeavours to cheat all he comes acquainted with."²

" To Cap^t John Dyer Clerk for the Town of Plymouth. This may Informe that Cornelius Warren of Middleberrough is a hired man with me on a fishing voyage and his family is now in Plymouth

" Yr humble servant

" John Bartlett "³

" There are also the surgeon and his wife, a shoemaker and spinstress; besides labourers and monthly hired servants: I think, in all, I have upwards of eighty. . . . As for manuring more land than the hired servants and great boys can manage, it is impracticable without a few negroes. It will in no wise answer the expence."⁴

" Ran away, on the 8th instant, from Leonard Koffer, of Morris-county, in the Jerseys, an Irish hired man, named Robert Steward, can talk good English, of middle size, well-made."⁵

" Why, then, will Americans purchase slaves? Because slaves may be kept as long as a man pleases, or has occasion for their labor; while hired men are constantly leaving their masters (often in the midst of his business) and setting up for themselves."⁶

¹ 1718, Acts and Resolves of the Province of the Massachusetts Bay, 1674, II. 119.

² Pennsylvania Gazette, 18-20 November, 1735, p. 4/1.

³ 1737, Plymouth Town Records, 1802, ii. 321.

⁴ 1741, G. Whitefield, Works, 1771, iii. 424, 435.

⁵ 1748, New Jersey Archives, 1695, xii. 507, 508.

⁶ 1751, B. Franklin, Works, 1887, ii. 227. Cited by Dr. Hall. The dearness of labor, the difficulty of obtaining servants, and the eagerness shown by servants, upon the expiration of their time, to set up for themselves, were constant complaints throughout the Colonial period. See J. Winthrop, 1645, History of New England, 1853, ii. 219, 220; J. Winthrop, Jr., 1690, in 5 Massachusetts Historical Collections, 1862, viii. 67; Sir E. Andros, 1678, in Documentary History of the State of New York, 1850, I. 61; 1717, Official Letters of A. Spotswood, 1685, ii. 227; C. Colton, 1728, in Documents Relative to the Colonial History of the State of New York, 1855, v. 668; Sir H. Moore, 1767, in *Ibid.* 1856, vii. 838, 839.

" Absent from the service of Peter Ten Eick, living upon Rariton river, in the Jerseys, a Dutch hired servant-man, nam'd John Engle, of middle stature, well set, red faced, and speaks bad English; he pretends to be a miller."¹

" The House being informed by Petition from the Masters, that a great Number of bought Servants are lately enlisted by the Recruiting Officers now in this Province, . . . we beg Leave to lay this Grievance before the Governor.² We presume that no one Colony on the Continent has afforded more free Recruits to the King's Forces than Pennsylvania. Men have been raised here in great numbers for Shirley's and Pepperell's Regiments, for Halket's and Dunbar's, for the New York and Carolina Independent Companies, for Nova Scotia, and even for the West India Islands. By this, and the Necessity we are under of keeping up a large Body of Men to defend our own extensive Frontiers, we are drained of our hired Labourers; and as this Province has but few Slaves we are now obliged to depend principally upon our Servants to assist us in tilling our Lands. If these are taken from us, we are at a Loss to conceive how the Provisions that may be expected out of this Province another year, for the Support of the King's Armies, are to be raised."³

" Slavery indeed is cancelled in the free country of *Britain* for several reasons; particularly because labour can be there performed by hired servants, apprentices and journeymen in such a populous place, much better and cheaper than in new plantations, where labourers are scarce and wages &c. very dear."⁴

" Nor shall any hired or indentured Servant or Apprentice, who has heretofore gained, or hereafter shall gain any legal Settlement in Pennsylvania, gain any Settlement in this Colony, by Virtue of his or her being hired or bound as aforesaid, or assigned to any Person inhabiting in any such City, Town-corporate, or Township or Precinct, unless Notice be given in writing, within Ten Days after such Hiring or Binding as aforesaid, to the Overseers of the Poor of the City, Town-corporate, Township, or Precinct, where such Person shall come to reside, by the Person who

¹ 1754, New Jersey Archives, 1897, xix. 306, 307.

² The Southern Colonies complained bitterly during the century of the enlisting of white servants.

³ 1755, Pennsylvania Colonial Records, 1851, vii. 27.

⁴ The American Magazine and Monthly Chronicle for the British Colonies, May, 1752, p. 401/1.

shall take such Apprentice, hire such Servant, or purchase such indentured Servant, or by the Person or Persons so hiring, binding, or indenting him or themselves, within Ten Days after every such Hiring, Binding, or Indenting as aforesaid."¹

" I visited (in Providence, R. I.) Jno. Angel, who told me he was born in Providence, Oct. 4, 1691, son of James Angel, son of Thomas Angel, who came from Salem with Roger Williams. . . . His grandfather he said was Mr. Williams' hired man at Salem, & came away with him; and the Angel family preserve many particulars respecting Mr. Williams."²

" Voted To abate to ye Hired men that are not Inhabitants in Said Town the Sum Eight Shillings & Eight pence of their Poll Tax for the year 1772 on account of the Extraordinary Charge by Reason of Building & Repairing the Meeting House in Said Town."³

" And be it further Enacted . . . That if any Person whatsoever, who shall be an Apprentice bound by Indenture to, or shall be an hired Servant to or with any Person whatsoever, who did come into and shall reside in any City, Parish, Town, or Place within this Colony, by Means or Licence of such Certificate as aforesaid and not afterwards having gained a legal Settlement in such City, Town, Parish, or Place; such Apprentice by Virtue of such Apprenticeship, Indenture, or Binding, and such Servant by being hired by or serving as a Servant as aforesaid to such Person, shall not gain or be adjudged to have any Settlement in such City, Parish, Town, or Place, by Reason of such Apprenticeship or Binding, or by Reason of such hiring or serving therein; but every such

¹ 1758, S. Nevill's Acts of the General Assembly of the Province of New Jersey, 1761, ii. 218.

² 1771, November 17, E. Stiles, Diary, in New England Historical and Genealogical Register, 1860, xiv. 81. As to Angel or Angell, Savage says:—

" Angell, . . . Thomas, Providence, one of the earliest sett. with Roger Williams, one of the freed, 1658, and constable, . . . He came from London, as serv. or apprent. of Roger Williams, as one tradit. has it, but ano. tradit. says, of Richard Waterman." (Genealogical Dictionary of New England, 1860, i. 57.)

Apparently, therefore, Angell belonged to the class of servants; but probably Stiles had no knowledge of Angell's exact position.

³ 1772, Muddy River and Brookline Records, 1875, p. 236. With this compare the following, 1777, p. 272, of the same volume:—

" On a Question, whether the Town will abate the Taxes of David Damon for the year 1776, in consideration of his having paid Taxes in Sudbury his Native place, tho' resident on hire in this Town, that Year — voted in the negative."

Apprentice and Servant shall have his or their Settlements in such Parish, Town, or Place, as if he or they had not been bound Apprentice or Apprentices, or had not been an hired Servant or Servants to such Person as aforesaid."¹

" Next again lives a Low Dutchman, who implicitly believes the rules laid down by the synod of Dort. He conceives no other idea of a clergyman than that of an hired man; if he does his work well he will pay him the stipulated sum; if not he will dismiss him, and do without his sermons, and let his church be shut up for years. . . . We entered into a large hall, where there was a long table full of victuals; at the lowest part sat his negroes, his hired men were next, then the family and myself; and at the head, the venerable father and his wife presided."²

" Many of the Quakers have planted their tabernacles in that delightful valley which is washed by the Shenandoe, beyond the first chain of mountains. They have no slaves; they employ negroes as hired servants, and have renounced the culture of tobacco."³

" That part of the tradesmen and manufacturers, who live in the country, generally reside on small lots and farms, of one acre to twenty, and not a few upon farms of twenty to one hundred and fifty acres, which they cultivate at leisure times, with their own hands, their wives, children, servants, and apprentices, and sometimes by hired labourers, or by letting out fields, for a part of the produce, to some neighbour, who has time or farm hands not fully employed."⁴

" He [Stiles] liberated his negro man-servant, Newport. . . . This excellent servant gave abundant proof of his faithfulness, during the life of his master. Such was his attachment to him and the family, that, a few years after their removal from Portsmouth, he followed them to New-Haven; and, as a hired servant, entered again into their service."⁵

" When a rich man dies, an undertaker, or fashionable performer is ordered, who employs a sort of equipages, drawn by horses, which I mistook for baggage wagons, in one of which he puts the body, while

¹ 1772, P. Van Schaeck's Laws of New-York, 1774, i. 753.

² J. Hector St. John's Letters from an American Farmer, 1782, pp. 61, 249.

The reference in the second extract is to the botanist, J. Bartram.

³ Translation of J. P. Brissot's New Travels in the United States, 1792, p. 408.

⁴ T. Cope's View of the United States, 1794, p. 442.

⁵ A. Holmes's Life of Ezra Stiles, 1798, p. 249.

several hired men, dressed fantastically in black, walk on each side, with not more unconcern than should be expected."¹

" There is no power given you, as master, to confine a hired servant by law: that is one part of their liberty and equality: nor is there any compulsion but the whip; and the white or hired man, had masters the power to use it, would not submit to that."²

" On Sundays it would be difficult to discriminate betwixt the hired girl and the daughter in a genteel family, were drapery the sole criterion."³

" There was something patriarchal in a family establishment formerly; the whole household were assembled at morning and evening prayers; the servants were not menials, and the children mixed freely with them. The dignity of the parent kept up a reserve that inspired awe, and restrained the confidences of his children. No very nice distinction was made in the kind of respect that was due from the children, on account of their youth, or that which was paid by the hired people, on account of their station. These latter were seldom born and seldom died servants; they served for a time, till their wages would enable them to begin clearing land for a farm."⁴

" In the olden time all the hired women wore short gowns and linsey-wolsey or worsted petticoats. . . . Now all hired girls appear abroad in the same style of dress as their ladies."⁵

" On the 3d of August, 1837, his little son, then a child of five years old, went out to a swamp in the vicinity of their dwelling [in Michigan] with a hired girl to gather whortleberries."⁶

" John Boatman was regarded as a valuable servant, and was accordingly held at a high price; but the money [for his redemption from slavery] was raised, and the master struck off something from the sum which he might have obtained. . . . Mr. Alexander kept them both as hired servants upon wages."⁷

" As a consequence of this shifting process, to which we have given but a glance, a very decidedly depressing element is now being rapidly

¹ 1802, W. Austin's Letters from London, 1804, p. 54.

² R. Parkinson's Tour in America, 1805, ii. 422.

³ 1818, J. Flint's Letters from America, 1822, p. 28.

⁴ W. Tudor's Letters on the Eastern States, 1820, p. 240.

⁵ 1842, J. F. Watson's Annals of Philadelphia, 1857, i. 176.

⁶ 1845, New England Historical and Genealogical Register, 1862, xvi. 247.

⁷ J. W. Alexander's Life of Archibald Alexander, 1854, p. 231.

introduced into New England farming life. The Irish girls have found their way into the farmer's kitchen, and the Irish laborer has become the annual "hired man."¹

"Abel had Revolutionary blood in his veins, and though he saw fit to 'hire out,' he could never stand the word 'servant,' or consider himself the inferior one of the two high contracting parties. . . . He may or may not figure again in this narrative, but as there must be some who confound the New-England hired man, native-born, with the servant of foreign birth, and as there is the difference of two continents and two civilizations between them, it did not seem fair to let Abel bring round the Doctor's mare and sulky without touching his features in half-shadow into our background."²

"Kilburn was aided in his extraordinary defense of his home by a hired man whose name was Peak."³

"To better his fortune when out of indenture at least two courses were open to him. He might remain with his master or some other person as a hired man or tenant upon his lands, or he might become an independent planter by taking up whatever unoccupied land in the community had proved too barren to be already patented by freemen, or by moving to the frontier where abundance of good land was to be had on the easiest terms."⁴

"We paid our respects to two elderly gentlewomen, sisters of a dead canon, and drank slowly at the spring situated before the door of their stone cottage, their hired man coming and remaining to silently gaze upon us till we resumed our march."⁵

"One of the hired men, a Swede, desired to drive to the country-seat for purposes of his own."⁶

"In the end we have the machine as we know it, with a boss at its head, which virtually carries on the government; the representative system has shrunk to a form, and the members of the Legislature, though

¹ The Atlantic Monthly, August, 1856, ii. 211/1.

² 1880, O. W. Holmes's *Elias Vener*, 1891, pp. 136, 137. Dr. Holmes's restriction of the term to those of American birth is probably either local or altogether a mistake.

³ E. Hitchcock's *Reminiscences of Amherst College*, 1888, p. 268.

⁴ J. C. Ballagh's *White Servitude in the Colony of Virginia*, 1895, p. 84.

⁵ A. F. Jacob's *On the Trail of Don Quixote*, 1894, p. 203.

⁶ S. Crane, in *Macaulay's Magazine*, August, 1884, p. 223/1.

elected by the people, are really the boss's hired men. . . . Platt announced several weeks ago that the charter was to be passed without amendment, and all his hired men had their minds made up for them when this decision was proclaimed."¹

"There is a sleigh and wagon shop a couple of miles out of the village, but the owner of this is also a farmer, and his only employee is also his hired farm man."²

"Was the expression *Hired man*," asked Dr. Hall, "brought over from East Anglia, or elsewhere, by Englishmen who colonized America in the seventeenth and eighteenth centuries?"³ Are not the British examples⁴ of the term which follow far too few to enable us to generalize? And were not the social conditions in this country from 1607 to 1776 of themselves sufficient to cause the term to arise here? And if the term was brought from England, is it not strange that there should be no trace of it here until 1787 — a hundred and thirty years after the settlement of this country?⁵

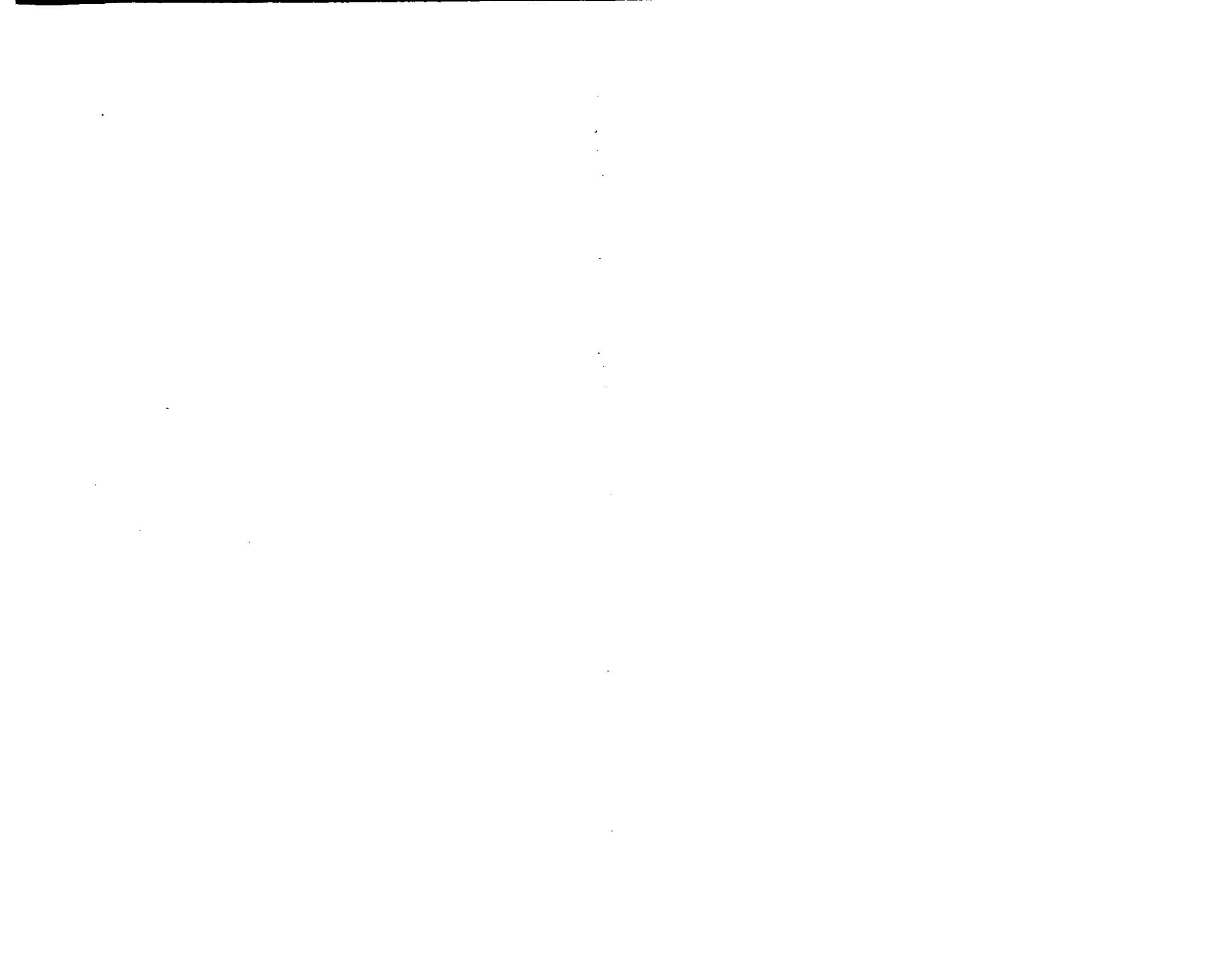
¹ The Nation, 14 May, 1896, 18 March, 1897, lxii. 261, lxiv. 194.

² A. F. Sanborn, in *The Atlantic Monthly*, May, 1897, lxxix. 560/2.

³ The Nation, 16 April, 1896, lxii. 304.

⁴ Dr. Hall referred to the use of the term by Wyellif and in the Bible; the extracts dated 1420-21 and 1603, I owe to the kindness of Professor J. M. Manly, of Brown University [now (1898) of the University of Chicago]; while for the remaining examples, as well as for other aid, I am indebted to our associate Professor G. L. Kittredge, of Harvard University.

⁵ It may be pointed out that the participial adjective "hired," qualifying various nouns, was common certainly after the middle of the sixteenth century. In addition to the "hired hys" of Wyellif, and the "hired servant" of the different versions of the Bible, we find, before 1700, such expressions as "hired soldier," 1651; "hired enemy," 1667; "hired servants," 1603; "hired house," 1611; "hired mule," 1612; "hired knife," "hired harm," 1623; "hired messenger," 1649; "hired valor," 1651; "hired ship," 1664; "hired service," 1669; "hired evidence," 1691. Moreover, it was customary, in this country, to speak of "hiring" a clergyman, or "hiring" a man to serve in one's place as town officer, or "hiring" men to serve in the Continental army. Finally, allusion may be made to the terms "hireman," a male servant who works for wages or hire, and "hikewoman," a maid servant, employed in Scotland. For example, see J. Jamieson's *Etymological Dictionary of the Scottish Language*, 1808, vol. i.; F. J. Child's *English and Scottish Ballads*, 1858, viii. 224; F. J. Child's *English and Scottish Popular Ballads*, 1890, iv. 262. See *Postscript*, post, p. 256.



British Examples.

" Sothi be . . . seyde, How many hirid men in my fadir houe, han
plente of looses; forsothe I perische here thurȝ hungir."¹

" Paid expenses incurred on preparing the krayer [a sort of vessel] of Heth, and in money delivered to the hired men going to sea with said krayer 26l. 10s. 8d."²

" They forsake, for Christ's love,
Travalle, hunger, thirst, and cold;
For they ben ordred over all above,
Out of youth till they ben old.
By the dore they goe not into the fold,
To helpe their sheep they nought travall;
Hired men all such I hold,
And all such false foule hem fall."³

" For though the warre waxt colde in euery place,
And small experience were there to be scene,
Yet thought I not to parte in such disgrace,
Although I longed much to see our Queene:
For he that once a hyred man hath bene,
Must take his Maisters leaue before he goe,
Unless he meane to make his freend his foe."⁴

" Item, I geve and bequeathe unto and amongste the hyred men of
the company which I am of, which shalbe at the tyme of my decease,
the sume of fyve pounds of lawfull money of England, to be equally
distributed amongst them."⁵

¹ 1330, St. Luke, xv. 17, Wycliffe Versions of the Holy Bible, 1850, iv. 100/1.

² 1420-1421, The Manuscripts of the Corporation of New Romney, in the Fifth Report of the Royal Commission on Historical Manuscripts, 1876, p. 540 a.

³ The Complaint of the Ploughman, in T. Wright's Political Poems and Songs relating to English History, Composed during the Period from the Accession of Edw. III. to that of Ric. III., 1850, i. 816.

⁴ c. 1575, G. Gascoigne's The frutes of Warre, stanza 112, Poems, 1860, i. 174.

⁵ 1605, Will of Augustine Phillips, in J. P. Collier's Memoirs of the Principal Actors in the Plays of Shakespeare, 1846, p. 82.

" Also her hired men are in the midst of her, like fatted bullocks, for
they also are turned backe, and are fled away together."¹

" O! you'll anon proue his hyr'd man, I feare,
What has he giu'n you, for this message?"²

Closely connected with the term "hired man," as illustrative of American social conditions, is the word "help." This word, wrote Schele de Vere, "often considered a genuine Americanism, is only an extension of the original word from an instrument to a person."³ "It is not certain," wrote C. A. Bristed, "whether the term *help* for servant, often set down as a general Americanism, but in fact scarcely known in the middle states, is of western or New-England origin. It is generally used in both sections of the country."⁴ We must, in the first place, distinguish between the Colonial use of this word and its present use. During the Colonial period the word was a generally descriptive one, designating any one who was called in to render assistance, while now it is specifically applied to a domestic servant.⁵ The citations before

¹ The Holy Bible, 1611, Jeremiah, xlvi. 21.

² 1616, B. Jonson's Devil is an Ass, Act ii., Scene ii., Works, 1640, ii. 116.

³ Americanisms, 1872, p. 487. De Vere adds: "Pepys already writes, March 18, 1662: 'What a *help* he was to us!'" There is, however, an error in the reference, for no such sentence occurs in the Diary under the date assigned. De Vere's further statement, that in New England "perfect social equality has prevailed from the oldest times," is so obviously erroneous as scarcely to require refutation; but attention may be called to several facts. Down to 1767 at Yale, and down to 1773 at Harvard, the students were "placed" in their classes, not alphabetically, but in accordance with the supposed social position of their parents. The "seating" of a New England meeting-house was according to the wealth, the social position, and the public services of the parishioners. In an Order passed in 1651, it is stated that—

"we cannot but accompt it of duty . . . to declare of vther detestation & dislike that men or women of meane condition, educations, & callinges should take vpon them the garbe of gentlemen, by the wearings of gold or silver lace, or buttons, or poynts at theire knees, to walke in greate bootes; or women of the same rance to weare silks or tiffany hoodes or scarfe, which though allowable to persons of greater estate, or more liberal education, yet we cannot but judge it intollerable in peoues of such like condition." (Massachusetts Colony Records, 1651, iii. 242).

See, also, the New England Historical and Genealogical Register, 1858, xii. 200; 1860, xiv. 104.

⁴ The English Language in America, in Cambridge Essays, 1855, p. 72.

⁵ It is also used in other senses, though this is its common meaning.—"Help." The common name in New England for servants, and for the opera-

1776, given below, show the accuracy of the statement made by Mr. Lowell in 1865:—

"The fewness and dearness of servants made it necessary to call in temporary assistance for extraordinary occasions, and hence arose the common use of the word *help*. As the majority kept no servants at all, and yet were liable to need them for work to which the family did not suffice, as, for instance, in harvest, the use of the word was naturally extended to all kinds of service. That it did not have its origin in any false shame at the condition itself, induced by democratic habits, is plain from the fact that it came into use while the word *servant* had a much wider application than now, and certainly implied no social stigma."¹

That the word had a certain vogue among the New England clergy alone proves that the term was not employed euphemistically. There is a gap in my quotations from the outbreak of the Revolutionary War until the present century. Meanwhile there had arisen the dislike to the word "servant" already commented upon, and on examining the examples of "help" throughout this century one is at once struck with the facts that the word has passed from a general to a specific meaning, and that it is a euphemistic substitute for the hated word "servant." With regard to the distribution of the word in this country, it is to be remarked that until 1800 the term appears to have been wholly confined, in its concrete sense, to New England; and that at present, as I am informed by Dr. E. Eggleston, who speaks from a large personal observation, "it hardly exists anywhere south of the belt of New England emigration," and that "it is not yet a fixed colloquialism except in populations derived thence." The early examples which follow are offered, not as proving that "help," in its concrete sense, was brought over from England, but merely as showing how difficult it often is to draw an absolute line between the abstract and the concrete senses, and as indicating how readily the concrete use would come in when the occasion for it arose. And, as the following examples, both of noun and of verb, show, such occasion did early arise in New England.

tives in a cotton or woollen factory." (J. R. Bartlett's Dictionary of Americanisms, 1848, p. 175.) See also The Century, Webster's International, and the Standard Dictionaries.

¹ Press Works, 1866, II. 43, 44.

Examples.

"Iasoun," quod she, "for ought I see or can,
As of this thing the which ye been aboute,
Ye han your-self y-put in moche doute.
For, who-so wol this aventure acherne,
He may nat wel asterten, as I leve,
With-outen deeth, but I his helpe be."²

"Att whiche tyme, soo God be my help, Pope Julie shewide me
expresslie that . . . he shulde undoubtidle within short space serve
owdres your Grace or me or bothe as untreule as he hadde doon hym."³

"Blessed is he that hath the God of Iacob for his helpe and whose
hope is in the Lord hys God."⁴

"You Gods that made me man, and sway in lone;
That hane enflamed desire in my breast,
To taste the fruite of yon celestiali tree,
(Or die in th' aduenture) be my helpe,
As I am sonne and sernant to your will,
To compasse such a bondlesse happinase."⁵

"It. to the helpes in the kitchen iiiij s. It. to the helpes in the but-
trey ij s. . . . It. helpes in the kitchen iiiij s. vj d. It. helpes in the
buttrey xvij d. It. to other s'ntants in yo' LL house that attended
ij a."⁶

"And the LORD God said, It is not good that the man should be
alone: I will make him an helpe meete for him."⁷

¹ 1385, Chaucer's Legend of Good Women, lines 1611-1616, Works, 1894, III. 188.

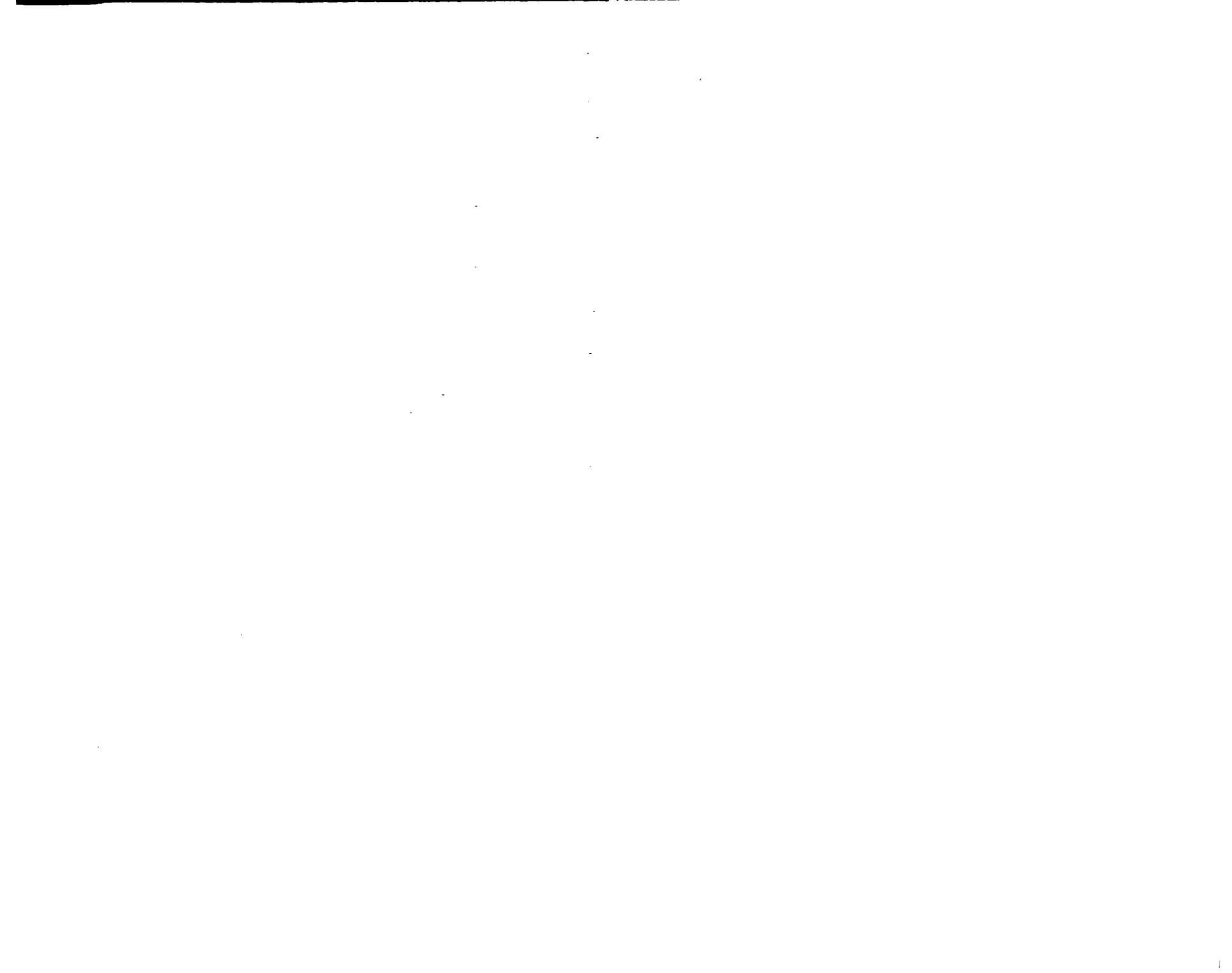
² 1514, Cardinal Bainbridge, in H. Ellis's Original Letters, Second Series, 1827, i. 220.

³ T. Matthew's The Byble, 1587, Psalms, cxvi. 5.

⁴ Shakespeare's Pericles, 1609, A 8; Act I., Scene I., lines 19-24.

⁵ 1506, 1601, The Expences of the Judges of Assize riding the Western and Oxford Circuits, Temp. Elizabeth, 1566-1601, 1858, pp. 18, 47. (Camden Miscellany, iv.) This extract I owe to Professor Kittredge.

⁶ The Holy Bible, 1611, Genesis, ii. 18. In the version by T. Matthew, 1587, this passage reads: "And the Lorde God sayde: It is not good that man should be alone I will make him an helpe to beare hym company."



"And God hath set some in the Church, first Apostles, secondarily Prophets, thirdly Teachers, after that miracles, then gifts of healing, helps in governmēts, diversities of tongues."¹

"That night he will take leave of his Ladie the Princesse by some window of a garden that lookes into her bed-chamber; by the which he hath spoken to her oft-times before, being a great meanes and helpe thereto, a certaine damzell which the Princesse trusts very much."²

"Lec. God for thy mercy, they are loose againe.

Adv. And come with naked swords,

Let's call more helpe to haue them bound againe."³

"It is ordered, that M^r Patricke & M^r Vndhill shall haue allowed them 6^t 8^t in money, to buy them howseholde stufte, & for helpe to washe, brewe, & bake, xx."⁴

"*Doyes of Humiliation.* . . . Aprill 7, 1636, in respect of p'sent outward Scarcity & in respect of helpes in ministery, as also for the p'vention of Enemis. . . . June 22, 1637. Ffor Successe in warring against the Pequouts, as alsoe for composing differences o' Brethren in y^e Bey, & for helpe in y^e Ministrye in respect of our selues."⁵

"Ther they haue gathered a Church, & doe intend to chuse officers shortly, & do desire better healpes in that kind, when the Lord is pleased to send them, & would gladly vee what meanes doth lye in vs to obtayne them."⁶

"It is ordered, y^e James Penn shall have 20^t, to be disposed among such of his servants & helpe as haue bene implied about y^e dyet & at-

¹ The Holy Bible, 1611, 1 Corinthiana, xii. 28. The Imperial Bible-Dictionary, 1691, iii. 86, says: "HELP3, the designation employed for a class of official ministrations in the primitive church, 1 Co. xii. 28; but the precise nature of which is nowhere particularly described, and has been variously understood." Hence it may not be uninteresting to compare several renderings. They are: "helpyngia," 1590; "helpers," 1534; "helpers," 1530; "helpers," 1557; "helpers," 1582. (See The English Hexapla, 1841.) In T. Matthew's version, 1537, the reading is "helpers."

² 1612, T. Shelton's *Don Quixote*, 1590, i. 190.

³ Shakespeare's *Comedies, Histories, & Tragedies*, 1623, p. 96a, *Comedy of Errors*, Act iv., Scene iv., line 149.

⁴ 1630, Massachusetts Colony Records, 1653, i. 76, 77.

⁵ 1630, 1637, New England Historical and Genealogical Register, 1856, x. 37.

⁶ 1630, W. Coddington, in 4 Massachusetts Historical Collections, 1865, vii. 278.

tendance of y^e Co't, & y^e late meeting of y^e commission"; 10^t thereof to y^e peant cooke, y^e wife of Mills, & y^e rest to oth' servants & helpe."¹

"Because y^e harvest of hay, corne, flax, & hemp comes usually so neare togethe' y^e much loose can hardly be avoyded, it is ordered & decreed by y^e Co'te, y^e y^e constable of ev'y towne, upon request made to y^e, shall require artific^e or handicrafts men, meete to labo', to worke by y^e day for their neigbo'r needing y^e, in mowing, reaping, & ifing thereof, & y^e those whom they help shall duly pay y^e for their worke, . . . pvided no artificer, &c, shalbe compeled to worke for oth' whiles he is necessarily attending on like busines of his owne."²

"A man and a boy, if their hands be not sleeping in their pockets, will feede as many Wormes as come of sixe or eight ounces of seed till they be past their fourt first sicknesses, and within some 14 dayes of spinning: Indeed the last 14 dayes require a more extraordinary diligence and attendance, a more frequent and carefull feeding, . . . At this more particular season, there is necessity of adding the labour of three or fourt helpers more (to which Women or Children are as proper as Men) which is an inconsiderable accession considering the gaine arising from it."³

"It is ordered by this Court & the authoritie thereof, that whosoever shall henceforth any wayes cause or suffer any younge people or persons whatsoeuer, whether children, servants, apprntizes, schollers belonging to the colledge or any other Latine schoole, to spend any of theire time or estate, by night or day, in his or theire company, howse, shoppes, shippe, or other vessell, whether ordinary, taverne, victuallings howse, cellar, or other place where they haue to doe, & shall not, from time to time, discharge & hasten all such youthes to theire severall imployments & places of abode or lodgings aforesd, if theire bēing in any such place be knowne to them, or any servant or other helpe in the family, or supplynges the place of a servant, at sea or at land, that then such person, howsholder, shopkeep, shipmaster, ordinary keeper, tav-

¹ 1645, Massachusetts Colony Records, 1653, ii. 138.

² 1646, *Ibid.* ii. 180, 181. For similar uses of the verb, in 1675, 1678, 1702, 1752, 1763, see Massachusetts Colony Records, 1654, v. 63; New England Historical and Genealogical Register, 1862, xvi. 61; J. J. Babcock's Notes and Additions to the History of Gloucester, Part II., 1891, pp. 2, 17, 60.

³ E. Williams's *Virgo Triumphant*: or, Virginia richly and truly valued; more especially the South part thereof, 1680, p. 24.

erno', victualler, or other, shall forfeit the sume of fortie shillinges, vppon legall conviction before any magistrate."¹

" I hope to see her [a saw-mill] goe in 2 or 3 daies; but my man is faine ill, John Lockwood is faine of, help is hard to get, the mill so remote, &c: will make all goe dull, but I intend to doe my vtmost indeavor by degrees. . . . I . . . yet think rather then your worshipp shall to much sofer, to send him, if he be well & willing, though I hire help in his roome, which also wilbe hard, now spring comes on. . . . The death & departare of such helps as God hath taken away is much to be bewailed. The Lord suply vs with meet helps. . . . Help is scarce & hard to gett, difficult to please, vncertaine, &c.; that I am redy to be discoridged least your worshipp should think that I am slack & negligent, vnriffrift, &c. Means runneth out & wages on, & I canot make choyce of my helpe, nor effect what I desire, so that I could gladly be excused or eased."²

" The Select men nowe to be choisin are to see the worke to be done about takin the soroonference of the land in pridinge help to eary the chaines &c."³

" What next I bring shall please thee, be assur'd,
Thy likenesse, thy fit help, thy other self,
Thy wish, exactly to thy hearts desire."⁴

" As to the meeetings upon this Iland [Martha's Vineyard] there are two Church meeetings and three other. In all wch: there are generall church Members: this is besides what is Donne by Metark at his place & sometimes some other helpe."⁵

" Whereas the present warr necessarily calls forth sundry men into the country' service whose employmēt & livelyhood consists in husbandry, the proppogating whereof in our respective tounes for the raying of corne and provisions is of great necessity for our subsistence, it

¹ 1651, Massachusetts Colony Records, 1654, iii. 242. My attention was called to this passage by Dr. E. Eggleston. The law was in force in 1600. (*Colonial Laws of Massachusetts*, 1888, p. 187.)

² 1650, 1650, J. Tinker, in *4 Massachusetts Historical Collections*, 1865, vii. 226, 230, 241, 245.

³ 1654, Dedham Records, 1654, iv. 76.

⁴ Milton's *Paradise Lost*, 1667, Book vii., lines 1008-1009. (Modern edition, Book viii., lines 448-451.)

⁵ 1671, T. Mayhew, in *The New England Company*, 1696, p. 40.

is therefore ordered by this Court, that the selectmen of the respective tounes doe take effectuall care, and are hereby impowred, to impresse men for the managment and carrying on of the husbandry of such persons as are called of from the same into the service, who have not sufficjent help of their ouene left at home to mannage the same, who shall be allowed eighteen pence a day for their sajd worke, to be payd by the respective persons for whom they worke."¹

" Charlestowne, . . . What is paid to the ministry, £100 per annum, in or as money, and 20^o per day for transient help."²

" Voted this: Nov. 28. 93. At a meeting of the Church at my house unanimously y^e Teacher Invite M^r Wadsworth to assist him constantly once a month or any other vacancy in Preaching, & any other help hee shall judge needfull."³

" 'memorandum' — That since my Last great sicknes (for about a yeare) The Deacons provided Transient help to preach one part of the Day.— My weaknes being more than ordinary manifest This Last winter (1696) — somtyme in January — Divers both of the Church & Town came to-gether unto me. And asked If I were willing to have a settled helper? . . . Then agreed by the Brethren there present, That whereas They did formerly in the Yeare 1694 Novem^r 28 vote & Nominated m^r Ebenezer pemberton to be an Assistant to M^r Charles Morton as a settled help in the work of the Ministry — And wee are see wel satisfied in what They have Don herein as to com to a free and Jeneral vote with the Inhabitants at the Time appoynted by the Coūtee In order to a settled help to the Rev-rand m^r Charles Morton in the work of the Ministry among us."⁴

" He or she that cannot do all these things, or hath not slaves that can, over and above all the common occupations of both sexes, will have but a bad time of it; for help is not to be had at any rate, every one having business enough of his own."⁵

¹ 1676, Massachusetts Colony Records, 1654, v. 78.

² 1680, *New England Historical and Genealogical Register*, 1851, v. 172.

³ 1693, in A. B. Ellis's *History of the First Church*, Boston, 1881, p. 149, note.

⁴ 1697, *First Record-Book of the First Church in Charlestown*, in the *New England Historical and Genealogical Register*, 1871, xxv. 64, 65.

⁵ 1711, J. Urmstone, in F. L. Hawk's *History of North Carolina*, 1856, ii. 216.



"Voted, that Mr. Waldron be supplied with constant help for six months next ensuing from this day. . . . Voted, that Mr. Waldron be supplied with help until the annual meeting in July next."¹

"Voted That the Select Men shall hire help to pull up the Barbary bushes that are in the Burying place."²

"About the estate in lands he [G. Whitefield] never understood how the matter lies, and says that he and every one of the trust in England conceive of the matter as though you had a farm of one or two thousand acres, and were to make the best of it by building, and buying or hiring help, with the money in England, to improve it, — something like his estate in Georgia."³

"The arrogance of domestics in this land of republican liberty and equality, is particularly calculated to excite the astonishment of strangers. To call persons of this description *servants*, or to speak of their master or mistress, is a grievous affront. Having called one day at the house of a gentleman of my acquaintance, on knocking at the door, it was opened by a servant-maid, whom I had never before seen, as she had not been long in his family. The following is the dialogue, word for word, which took place on this occasion: — 'Is your master at home?' — 'I have no master.' — 'Don't you live here?' — 'I stay here.' — 'And who are you then?' — 'Why, I am Mr. —'s help. I'd have you to know, ma'am, that I am no servant; none but negroes are servants.'⁴

"Help, n. Often used in New England instead of *servants*; and it generally means female servant: *Ex.* My *help* is very good; such a one is very good *help*. The word *domestic* is, however, more common."⁵

"A great number of farmers have more land inclosed in fence than they can well manage: ask one of these the reason, he replies, 'I want help.' An assistant enables him to cultivate a portion of his land that would otherwise become overrun with weeds."⁶

¹ 1723, 1726, in C. Robbins's History of the Second Church in Boston, 1852, p. 210.

² 1792, Muddy River and Brookline Records, 1875, p. 204.

³ 1770, N. Whitaker, in F. Chase's History of Dartmouth College, 1891, I. 242.

⁴ C. W. Janson's The Stranger in America, 1807, p. 27.

⁵ J. Pickering, in Memoirs of the American Academy of Arts and Sciences, 1815, II. 408.

⁶ J. Readbury's Travels in the Interior of America, 1817, p. 218.

"There is no such relation as master and servant in the United States: indeed, the name is not permitted; — 'Help' is the designation of one who condescends to receive wages for service. This help is generally afforded by free blacks, and Irish; our natives seldom lowering the dignity of free-born republicans so much, as to enter a house in the capacity of servants."¹

"Hezekiah K—— left his wife and his home at a mature age, to better his condition by a temporary absence. He came to Boston, to let himself for help; and, to express it in other words, entered into service in a gentleman's family, and changed his place but once during this career. . . . I do not know in what capacity he originally entered these families; but he served, on occasion, as a double to every servant, from the coachman to the chambermaid. He could drive the horses, cook the dinner, sweep the apartments, and make the beds; and when he had nothing else to do, would sit down to sew; making his own clothes and mending his own stockings."²

"The servant girls in New York assume the title of 'Miss;' their male visiting friends invariably making use of this term in inquiring for them. It is the general custom amongst a certain rank in life, and that by no means the lowest, to dine at the same table with their hired girls, or 'helps,' as they are occasionally styled."³

"Help is the word by which servants reconcile their pride with their interest, or employment, as it denotes, that though the assistants, they are the equals of their employers."⁴

"The greatest difficulty in organizing a family establishment in Ohio, is getting servants, or, as it is called there, 'getting help,' for it is more than petty treason to the Republic, to call a free citizen a servant."⁵

"In the families of the rich you encounter no parti-coloured sops, with loads of lace and livery buttons; but you meet with genteel, obliging, and respectable attendants, frequently from the continent of Europe; and in ordinary families or public hotels, &c. men of colour, i. e. Blacks,

¹ J. Bristed's Resources of the United States of America, 1818, p. 400. The same book was published in London with the title, *America and her Resources*.

² W. Tudor's Letters on the Eastern States, 1820, p. 249.

³ P. Neileon's Recollections of a Six Years' Residence in the United States of America, 1830, p. 26.

⁴ S. G. Goodrich's System of Universal Geography, 1832, p. 104.

⁵ Mrs. Trollope's Domestic Manners of the Americans, 1832, I. 72, cited by Miss Salmon.

are the usual *helps*. From none did I ever receive an uncivil word or meet with a sulky look. I was civil to them, and they were at all times civil and serviceable to me. But we are told no man dares to call one of his attendants *servant*. Perhaps such a term might give offence: I know not. But let us think for a moment how rarely have we occasion, at home, to call Jack or Tom, by such a designation. The insidious and unreasoning prejudice which too generally prevails in America against unhappy Negroes, and a dread upon the part of those who are free, of being classed with their less fortunate brethren, contributes greatly to a dislike of the term *servant* in the States, which is there considered as nearly synonymous with *slave*.¹

"The inhabitants of New England are quite as willing to call their servants 'helps,' or 'domestics,' as the latter repudiate the title of 'masters' in their employers."²

"I do not value much the antislavery feeling of a man who would not have been abolitionist even if no such abomination as American Slavery ever had existed. Such a one would come home from an anti-slavery meeting to be an unhired overseer of his wife and children and *help* (for I love our Yankee word, teaching, as it does, the true relation, and its being equally binding on master and servant), or he would make slaves of them that he might go to one."³

"The great annoyance of which people complain in this pleasant land [Canada] is the difficulty of obtaining domestic servants, and the extraordinary specimens of humanity who go out in that capacity. It is difficult to obtain any, and those that are procured are solely Irish Roman Catholics, who think it a great hardship to wear shoes, and speak of their master as the 'boss.' At one house where I visited, the servant or 'help,' after condescending to bring in the dinner, took a book from the *chiffonier*, and sat down on the sofa to read it. On being remonstrated with for her conduct, she replied that she 'would not remain an hour in a house where those she *helped* had an objection to a young lady's improving her mind!'"⁴

"In consequence of the great difficulty which private families experience in procuring cooks and housemaids in a country where menial ser-

¹ A. Ferguson's Practical Notes made during a Tour in Canada, and a Passage of the United States, 1838, pp. 233, 224.

² F. J. Grund's The Americans, 1837, II. 66, cited by Miss Salmon.

³ 1846, J. R. Lowell's Letters, 1894, I. 105.

⁴ Miss Bird's The Englishwoman in America, 1858, p. 214, cited by Miss Salmon.

vice is considered beneath the dignity of a native-born American, where service is called 'help,' to avoid wounding the susceptibilities of free citizens, and left almost exclusively to negroes and the newly-imported Irish, . . . the mistresses of families keeping houses on their own account lead but an uncomfortable life."¹

"One of the subjects on which the minds of men and women in the United States seem to be unanimously made up, is the admitted deficiency of *help*—the word which describes menial attendance in the aggregate—and the very little assistance which the 'help' affords the employer. . . . In the first place they satisfy themselves that they are *helps*, not servants—that they are going to work with (not for) Mr. so and so, not going to service."²

"The appetites of the mistress are commonly the same as those of her servant, but her society is commonly more select. The help may have some of her tenderloin, but she must eat it in the kitchen."³

"The hired girl sat down to the table with David and his mother. . . . Susan Means had always been faithful, reliable *help*.⁴

"We used to receive into the family as 'help,' as they used to be called, young men and young women from the country. . . . They did not like to be called servants, did not show great alacrity in answering the bell, the peremptory summons of which had something of command in its tone, which did not agree with the free-born American."⁵

"I never thought that I should have to go out into the world as a lady-help! . . . But no matter; life is n't all roses when you start out as a lady-help."⁶

"The Executors of the late Wm. West, Esq., of Barcote, Faringdon, Berks, having to close the establishment, wish to recommend thoroughly Head Coachman, Carriage Groom, and Stable Help."⁷

"Mother's Help Wanted, to teach three little girls thorough English, music, &c. Good needlewoman."⁸

¹ C. Mackay's Life and Liberty in America, 1850, I. 42, cited by Miss Salmon.

² T. C. Grattan's Civilised America, 1859, I. 250, 259, cited by Miss Salmon.

³ 1859, H. D. Thoreau's Autumn, 1894, p. 66.

⁴ Miss M. E. Wilkins's Humble Romance, 1837, p. 64.

⁵ c. 1894, O. W. Holmes, in Life and Letters, 1894, I. 34.

⁶ J. S. Winter's My Geof, 7th edition, 1897, pp. 1, 30.

⁷ London Times, 12 October, 1897, p. 16/2.

⁸ London Daily Telegraph, 12 October, 1897, p. 15/L

"Useful Help.—Superior young person seeks Situation in private hotel or otherwise; quick and energetic, domesticated; abstainer, Protestant; no washing."¹

"Companion-Help wanted (30) for middle-aged lady. To make herself generally useful. Small remuneration."²

"Widow Lady requires Lady-Help; servant kept; Roman Catholic; good health, domesticated, good needlewoman."³

Not only do these extracts and references, to which so much space has been given, show the history of the terms under discussion, but they also throw much light on the social conditions which, at different times, have prevailed in this country. The early settlers naturally brought with them the social ideas in which they had been nurtured, and so deeply did those ideas take root here that they remained, with little change, until the period of the Stamp Act. On the other hand, the restlessness, the desire to improve one's condition, the longing to set up for one's self,—these were as typical of the American colonist as they are of the American citizen. Finally, the extracts enable us to see how the systems of slavery and of white servitude existed side by side for over a century and three-quarters; and how, as a result of the social and political upheaval of the last thirty years of the eighteenth century, the system of white servitude, clashing with the ideas of equality and national life, gradually crumbled to pieces, still leaving, however, the worse blot of slavery. It is characteristic of the rapidity with which changes take place, and of the ease with which people conform to new conditions, that few of the generation to which the present writer belongs have any realizing sense of slavery; and so completely have all traces of the system of white servitude disappeared, that the very existence of such a system is probably unknown except to those who have had occasion to inquire somewhat closely into our early history.

¹ London Daily Chronicle, 12 October, 1897, p. 11/7.

² London Daily News, 12 October, 1897, p. 10/4.

³ London Evening Standard, 29 September, 1897, p. 2/4. Dr. Hall writes me:

"The English use of *helps* to which you refer has, I think, come up in very recent years. Its appearance here is largely owing, if not altogether, to American precedent. Apparently it has two senses. In *Lady helps* it is pretty clearly euphemistic, while, in *maids helps*, *general helps*, *mother helps*, etc., it is equivalent to *servants*; in the first instance named it meaning, however, *inferior servants*. I would not be quite sure, though. In conversation I have never heard it used in any sense."

POSTSCRIPT.

Since the above Paper was written, several passages have come to light which seem worth recording. In a Town Meeting held at Providence, Rhode Island, 27 January, 1696-97, it was ordered that —

"in Case any Person Concerned in sd fields doe faile of doing his or their part or parts of s^d fence . . . that then the men chosen to judge the sufficiencye of sd fences & to looke to the performance therof . . . are hereby impowered to imp^v persons to make up the said defective fence; & then to repare to any one of the Magistrates & desire of them a warrant to a Const^[t] Jble to destraine so much of the Estate of the defective person or persons & to deliver it to the sd men who are over seers of s^d fences who shall there with pay those whome the imploy about y^e s^d worke & also to pay themselves for their Time the which wages shall be 2^r 3^r & day both for the overseers & also for the hired men."¹

"Whereas Reuben Stevens in Capt. Jacob Bayley's Roll Received ten pounds as Bounty, & did not pass master, & afterwards was Rec^d as a hired man in the Room of Nathⁱ Watts in the same company which Watts also Received Bounty, therefore

"Voted, That the Treasurer stop ten pounds out of the said Stevens Wages & give the Province Credit for the same."²

The first of these extracts requires a slight modification of the statement made on page 241,—that the term "hired man" is not found in this country until 1787.

Looking beyond the borders of the American Continent, we find that on 7 October, 1652, a law was passed in Barbadoes of which one clause is as follows:—

"Item, whatsoever servant, or hired man, as Overseers, Fallers Assenego-men, or others whatsoever, shall imbezil, purloin, steal, wilfully waste, or make away any of his masters or Mistresses Fowlis, Hogs, Sheep, Cattel, . . . shall upon conviction of every such offence before any Justice of the Peace of this Island, be adjudged to serve his said Master, or Mistress three years after his first time is expired, the said servant, or hired man to receive no salary for the time so hereby appointed."³

¹ Early Records of the Town of Providence, xi. 29.

² 1758, New Hampshire Provincial Papers, vi. 658.

³ Acts and Statutes Of the Island of Barbadoes, p. 18. This work is without date, but it was compiled by John Jennings and was published in 1654.



"And it is hereby declared and published, That the intent thereof is meant only to reach to Covenant-servant's wages, hired-Servants, and hired-labourers, that are hired by the month, day, or year, and to all Artificers, whose whole debt and demand, exceeds not four-thousand pounds of Muscovado Sugar."¹

"Be it enacted . . . That all and every Master or Mistress of Slaves, for the first Five working Slaves, shall be obliged to keep One white Man-servant, Overseer, or hired Man, for Three Months at least; and if the Number increase to Ten, Two; and for every Ten after the first, One, to be resident in the Plantation where the Negroes are employed. . . . That if any Servant or hired Labourer shall lay violent Hands upon his or her Employer, Overseer, or other Person put in Authority over him or her, such Servant or Labourer shall, for such Offence, serve his or her Employer without any Wages Twelve Months, by Order of any Justice of the Peace, on Conviction."²

The occurrence of the term "hired man" as early as 1652 in the West Indies, where the social conditions appear to have been much the same as in Virginia and Maryland, makes it probable that the expression was also in use on the Continent earlier than my examples indicate.

Of the two extracts which follow in further illustration of the use in England of "help," the first I owe to Professor Kittredge, while the second is taken from the Oxford English Dictionary.

"Blake seated himself by his side; the help who was to accompany them, got up behind. . . . I found Murdock's ostler very drunk, but sober, compared with that rascally help whom we had been fools enough to take with us."³

"There were 600 horses in the Serene stables — no less than twenty teams of princely carriage horses, eight to a team; sixteen coachmen; fourteen postillions; nineteen ostlers; thirteen helps, besides smiths, carriage-masters, horse-doctors, and other attendants of the stable."⁴

There seems to be nothing in the evidence adduced in this Postscript which affects the conclusions expressed in the Paper itself.

April, 1900.

¹ 1661, R. Hall's Act, Passed in the Island of Barbados, 1764, p. 20.

² 1661, Acts of Assembly Passed in the Island of Jamaica, London, 1764, pp. 1, 2.

³ T. Hughes, *Tom Brown at Oxford*, Boston, 1861, I. 83, 94.

⁴ 1661, W. M. Thacher, *The Four Georges*, 1866, p. 16.

MR. JOHN NOBLE communicated a group of documents pertaining to "persons enemical to the States," embodied in the following paper entitled —

SOME MASSACHUSETTS TORIES.

THE Tories of Massachusetts have been thoroughly written up, but occasionally among the old papers of the Courts, here, as in many other instances, one comes upon scraps, or fragments, or detached memoranda, written at the time, or upon cases nearly or quite forgotten, which have rested there, possibly undisturbed for a hundred years or more. Perhaps it may be so with these presented to-day. This group of Revolutionary papers, touching "persons enemical to the States," differing in character, but having a certain relation to each other through their time and subject-matter, illustrate in several phases the political and social conditions of the period, aside from any personal interest connected with those whose fates or fortunes were concerned therein. However slight they may be in themselves, they fall, for whatever they are worth, into the accumulating material for history as told by contemporaries.

One paper is an original Verdict, just as it was drawn up by the Jury to whose decision the issue was committed and by whom it was returned into Court and accepted. It is on a narrow strip of paper, with the lines of age upon its face, without date or signature, and astray from any other papers or proceedings of the case in which it was rendered, of which nothing else now remains. Its identification, however, can, without much difficulty, be made out. It is somewhat informal, and lacks the more imposing outward characteristics which belong to similar instruments to-day, but it contains all the essential elements, and, as history shows, was effective. The Verdict is as follows: —

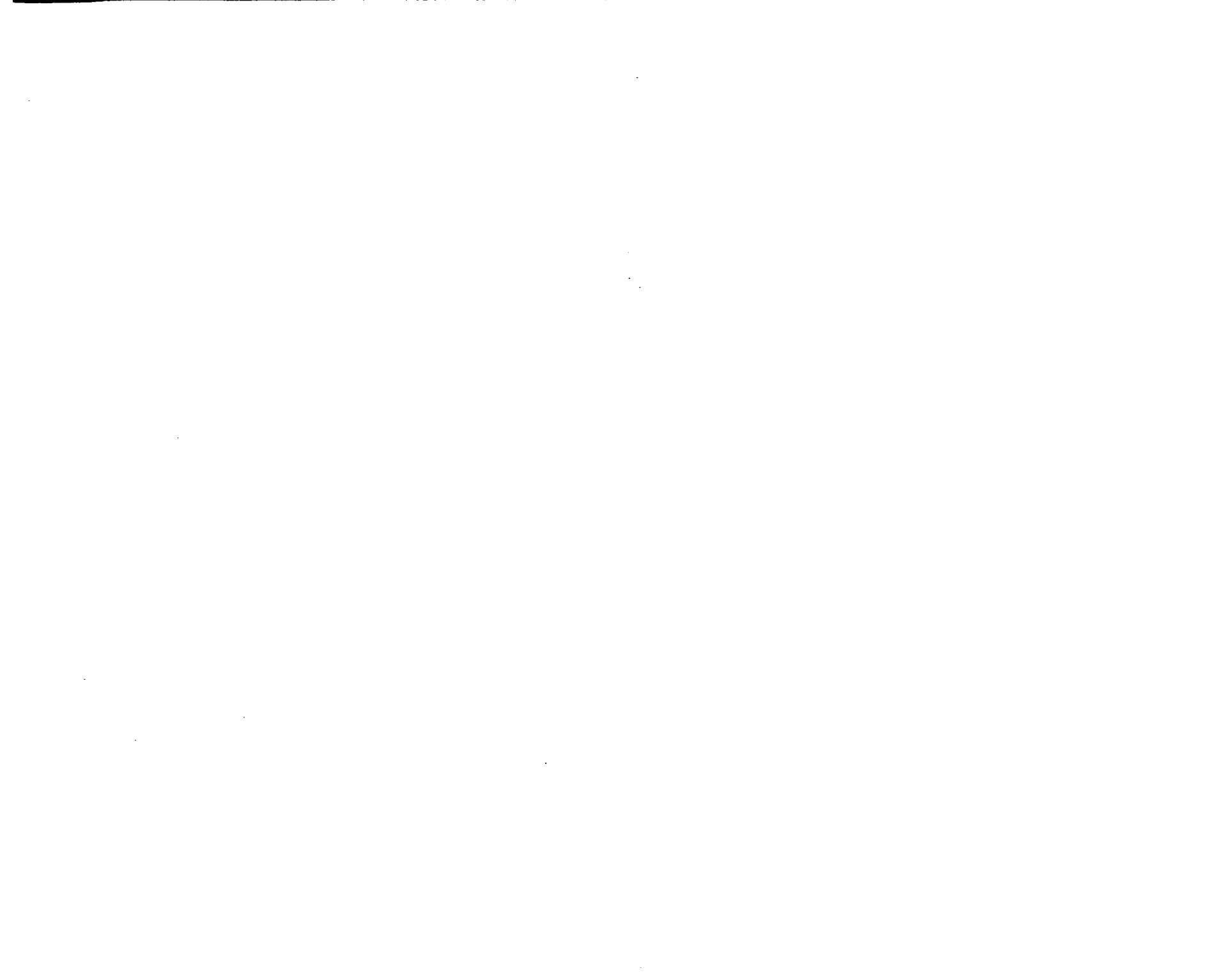
I.

are of opinion

"The Jurors upon their Oaths say, that Edward Wentworth, since the 19th April 1775 has been & now is Inimically disposed towards this & the other United States of America, That his further Residence, in this State is Dangerous to the Publick Peace & Safety."

[Endorseed] Edward Wentworth

Verdict —



There is nothing upon the Verdict to show under what particular law the trial was held; but there was ample legislative provision for it. Mr. Goodell, in his Notes to the standard edition of the Province Laws, gives the full history of the proceedings and the enactments relating to persons suspected of being "dangerous to the State," or "disaffected to the Cause of America," in his account of the Court of Inquiry with a jurisdiction limited to Suffolk County, and of the General Acts of 1 May, 1776, ch. 21, of 9 May, 1777, ch. 45, and the Supplemental Act of 10 May, 1777, ch. 48. The latter, which by its terms was to be in force only till 1 January, 1778, provides for procuring evidence, preparing lists of suspected persons, for their apprehension, their trial by jury, their punishment on conviction, with sundry regulations as to the disposition of their property and estates.¹

The Boston Town Records in the early days of the Revolution show the state of public feeling and also the various measures taken with regard to suspected or dangerous persons. For example: — There was an article in the Warrant for the Town Meeting of 10 March, 1777 —

"To consider what Steps are necessary to prevent the Inconveniences & Danger that may happen from persons resorting to, or residing in the Town, who are justly suspected of being inimical to the American States."

The Committee appointed thereon reported —

"That a Committee of Twelve suitable persons, one in each Ward, be chosen to take the Names of all Persons, who have come to reside in Town, since the 1st of April 1775 . . . the Names of all Refugees & other disaffected Persons & to take the Names of the Towns & States, from whence such Persons come, who are justly suspected of being inimical to the States of America; & make Report from time to time To the Committee of Correspondence, Inspection & Safety, to be used by them, as Occasion may require."²

¹ Province Laws, v. 478, 537, 611, 648, 722, 724. See also pp. 615, 644, 770, 806. These Acts, which were expressly of limited duration, were renewed from time to time, in the Acts of 20 June, 1776, ch. 10, of 28 June, 1776, ch. 6, and of 22 June, 1776, ch. 7. (*Ibid.*, v. 584, 1072, 1207.) See also *Ibid.*, v. 522, 584, 1266, 1444.

² Boston Record Commissioners' Reports, xviii. 275-277.

On the fifth of May, the draught of a Petition to the General Assembly, which had been voted on the third, was submitted, praying, among other things, —

"that effectual Measures be taken to secure us from our internal Enemies, which we apprehend cannot be accomplished, but by a total & instant Separation; [and] that whenever it shall appear to such Persons as the Hon^{ble} Court shall please to appoint, that the Residence of any Person or Persons in this Town, is inconsistent with the public peace & safety, that they be appointed & impowered to remove immediately such Persons & their Families, to any place of the United States, and making their Return, without leave first obtained of the General Court, Treason against the State."¹

In the Warrant for the Town Meeting held on Saturday, 17 May, 1777, there was an Article under the first section of the Act of 10 May, 1777, ch. 48² —

"To choose by Ballot some Person firmly attached to the American Cause, to procure Evidence that may be had of the inimical Dispositions, towards this, or any of the United States, of any inhabitants of this Town, who shall be charged by the Freeholders of being a Person whose Residence in this State is dangerous to the public peace or Safety . . . after long Debate a motion was made, that the Sense of the Town be taken, whether they will now come to the Choice of such a Person — the Motion being withdrawn, The Inhabitants were directed to bring in their Votes for a Person to procure Evidences &c agreeable to a late Act of the Court. The Votes being bro't in & Sorted, it appeared that William Tudor Esq. was chosen for the purpose aforesaid."

At the adjournment of the Meeting, in the afternoon, it was —

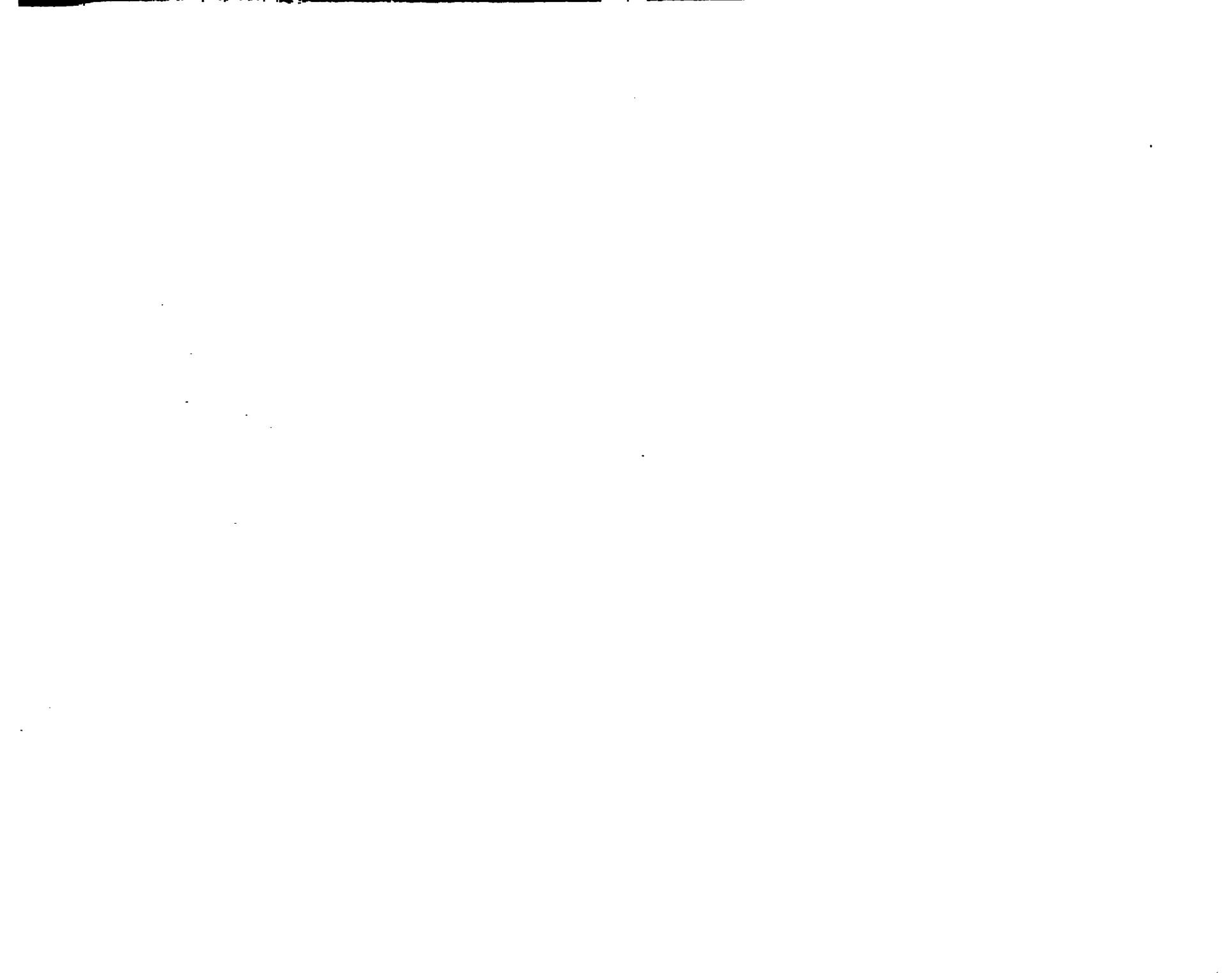
"Voted, that the Selectmen be desired to retire & make a List of such Persons as they shall know, or believe to be inimical to the united States, and lay the same before the Town."

This was done. Then followed a vote for —

"a Comitte to wait upon One of the Hon^{ble} Council of this State & desire that the Persons voted, by the Town to be inimical persons to these States, be immediately apprehended & confined."

¹ Boston Record Commissioners' Reports, xviii. 279, corrected by the original Record.

² Province Laws, v. 512, 734-736.



At the adjournment, on the following Monday, the Committee reported their compliance with their instructions,—

" But that they had received for Answer, that this could not be done by him without Advice of Council.

" The following List¹ of such Persons belonging to this Town, as have been endeavouring since the 19th of April 1775, to counteract the united Struggles of this & the neighbouring States, in the Opinion of a Majority of this Meeting is the List which the Town Clerk is to deliver to two or more Justices of the Peace for this County — Quorum Unus — agreeable to a late Act of the General Assembly — Viz¹: —

Ebenezer Norwood	William Perry
Mather Bylcs, D. D.	D ^r Samuel Danforth
Benjamin Phillips	George Lush
Dr James Lloyd	Edward Hutchinson ²
Daniel Hubbard	Thomas Edwards
D ^r Isaac Rand Jun ³	Hopestill Capen
John Tufts	Patrick Wall
Edward Wentworth ⁴	Benjamin Davis

¹ With the exception of those of John Tufts, Patrick Wall, Benjamin Davis, Jr., David Parker, Charles Whitworth, and Dr. Thomas Kast, all the names in this List appear in Sabine's Biographical Sketches of Loyalists of the American Revolution (edition of 1864), — several of them finding a place in the "Fragments," printed at the end of Volume II., — which see.

Eleven of the persons named in this List appear in Mr. Foote's Annals of King's Chapel, namely: — Mather Bylcs (i. 482; ii. 483), Benjamin Phillips (ii. 296), Dr. James Lloyd (ii. 185, 387, 390, 619), Daniel Hubbard (ii. 307), Dr. Isaac Rand, Jr. (ii. 201, 323), William Perry (ii. 296), Richard Green (ii. 295), Thomas Amory (ii. 293, 480), Dr. Thomas Kast (ii. 170, 388, 381, 606), John Erving (ii. 129, 160, 170, 210, 226, 588), and George Bethune (ii. 72).

Dr. James Thacher's American Medical Biography contains appreciative notices of Dr. James Lloyd (i. 356—376), Dr. Isaac Rand (ii. 13—16), Dr. Samuel Danforth (ii. 233—238), and Dr. Thomas Kast (i. 344, 345).

Several of the names in this List are to be found among the Addressers of Hutchinson and the Protesters against the Solemn League and Covenant, printed in 1 Massachusetts Historical Society's Proceedings for October, 1870, xi. 322—305. See also *Ibid.* for December, 1880, xviii. 280—385.

² Dr. Isaac Rand, Jr., a graduate of Harvard College in the class of 1761 was of the Charlestown family. See Wyman's Genealogies and Estates of Charlestown, ii. 706; and Thacher's American Medical Biography, ii. 13—16.

³ See *post*, p. 262.

⁴ Edward Hutchinson is believed to have been a cousin of the Governor. He was a son of the Hon. Edward Hutchinson (1678—1752), Judge of

Ben th Davis, Jun ^r	Thomas Amory
David Parker	Charles Whitworth
James Perkins	D ^r Thomas Kast
Nathaniel Cary ¹	John Erving Esq.
Richard Green	George Bethune
William Jackson	Dr. Miles Whitworth. ²
Samuel Broadstreet ³	

At a Town Meeting on Thursday, 22 May, 1777 —

" Agreeable to a Writ from Ezekiel Price Esq. Clerk of the Sessions &c — the following Persons were drawn out of the Jury Box, as Jurors for a special Court, to be held for the Tryal of such Persons as the Town have represented to be Inimical to these States and dangerous to the public Safety, — Viz¹ Messrs Jeremiah Belknap, Edward Carnes, Samuel Dashwood, William Fallace, John Newell, John Ballard." ⁴

Probate in the County of Suffolk, who was succeeded by his nephew the Governor; born in Boston, 18 December, 1729; graduated at Harvard College in 1748; an Addresser of Gage in 1775; and died in 1806. (New England Historical and Genealogical Register for 1865, xix. 18—20; Whitmore's Civil List, p. 80; and Sabine's Biographical Sketches of Loyalists of the American Revolution (edition of 1864), ii. 535.)

¹ Nathaniel Cary was a Boston merchant, at the Town Dock, an Addresser of Hutchinson and Gage, and a Protester against the Solemn League and Covenant. (Memorial History of Boston, iii. 158, 176; and 1 Proceedings of the Massachusetts Historical Society for October, 1870, xi. 302—305.)

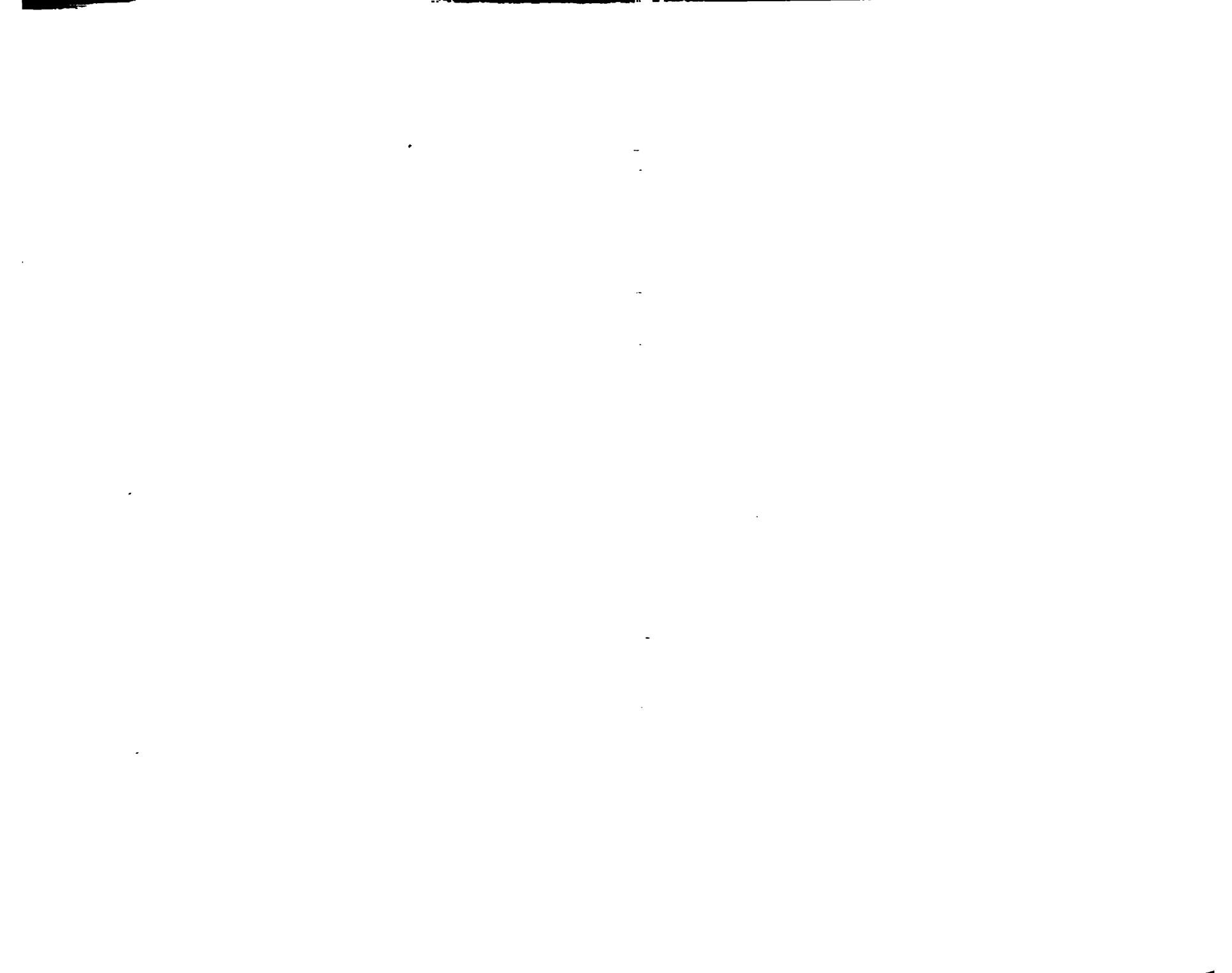
² Samuel Bradstreet—or Broadstreet, as the name was formerly pronounced, and sometimes spelled—was probably the merchant of that name of Boston and Charlestown, a son of Samuel Bradstreet, born 6 (baptized 8) May, 1743, at Charlestown, who died, a bachelor, 14 July, 1810. He was a grandson of the Hon. Richard Foster, Jr., Sheriff of Middlesex, 1731—1764, and Judge of the Court of Common Pleas, 1764—1771. (Family Record; and Wyman's Genealogies and Estates of Charlestown, i. 115, 116, 363.)

³ Boston Record Commissioners' Reports, xviii. 280—283. In his Diary, under date of 20 April, 1776, Ezekiel Price states that —

" Dr. Whitworth and son were yesterday on their examination, and afterwards ordered to give bail. It is said the justices have evidence of the doctor's not having acted the part of an honest surgeon in his practice on the late unfortunate Colonel Parker; and that his limb was unnecessarily taken off, and a cruel neglect of attendance on him, by which means he lost his life."

(1 Proceedings of the Massachusetts Historical Society for November, 1863, vii. 252, 253.) Dr. Whitworth was an Addresser of Hutchinson, and his name appears in the List as a Surgeon, of Wing's Lane. (*Ibid.* for October, 1870, xi. 304.)

⁴ Boston Record Commissioners' Reports, xviii. 284.



"At a Meeting of the Selectmen June 25, 1777. . . . The following were drawn Jurors for a special Court to be held at Boston for the trial of suspected Persons 1st Tuesday July next — Viz' Mess^e Joseph Bradford Jas', John Setten, Joseph Loring, Edmund Hart, Joseph Child John Matchet."¹

All these proceedings show the vigor with which our forefathers acted, and none the less their rigid adherence to all the requirements of existing law.

EDWARD WENTWORTH, son of Edward and Keziah (Blackman) Wentworth, was born in Stoughton, Massachusetts, 1 July, 1729. He married (1), 28 July, 1752, the widow Susanna (Winslow) Symmes, of Stoughton, born 6 October, 1724, daughter of Josiah and Sarah (Hayward) Winslow. She died in May, 1780.² Wentworth married (2), 24 September, 1780, Mary Reed³ of Boston, who died there 24 March, 1800, aged 68. His name appears in the List of Loyalists,⁴ and also, in company with the Rev. Dr. Byles and other worthies, in the List given above. He is also of enough consequence to be accorded by Sabine a place in his Appendix.⁵ His residence, his apprehension, the Court where he was tried, and the time, appear clearly by the Town Records, above cited. The record of his trial is not to be found. Ten detached leaves are all that remain of the Records of the Court of Sessions from April, 1776, to July, 1780, and a part of these were discovered in the Miscellaneous Collection described in a previous communication, and restored to appropriate companionship. According to Sabine, he was one of the citizens of Boston arrested by order of the Council, in April, 1776. He appears to have been found guilty, at a

¹ Boston Record Commissioners' Reports, xxv. 42.

² The Registers of Trinity Church, Boston, record the burial of "Mrs. Wentworth, wife of Mr. Edward Wentworth, 55" years, on 27 May, 1780; and the marriage of Edward Wentworth and Mary Reid, 24 September, 1780.

³ Thomas Hanford Wentworth, grandson of Edward Wentworth, says:—
"Mrs. Mary Reed, of Boston, Mass., only daughter of Lawrence and Martha Payne, was born in London, England, and came to this country in 1740. . . . She married (1) —— Downe . . . ; probably married (2) Capt. —— Reed." (The Wentworth Genealogy: English and American (edition of 1878), i. 341, 342.)

⁴ Memorial History of Boston, iii. 175-180.

⁵ Biographical Sketches of Loyalists of the American Revolution (edition of 1884), ii. 594.

special sitting of the General Sessions of the Peace, in June, 1777, and to have been sent on board the guardship.¹ He died, in consequence of a broken leg, at the age of 65 years, and was buried in Boston, 9 July, 1794.²

Two other papers are the Records of two Trials found among the remnants just mentioned. They are for minor offences, but go to show that absolute loyalty to the new State was insisted upon, and that words no less than deeds were required to be above suspicion or question.

II.

"The Jurors upon their Oath present That Abraham Solomon of Boston in the County of Suffolk Yeoman at Boston aforesaid on sundry days & times between the fourth of March last and the twenty seventh day of the same month uttered in Company many malicious and seditious Expressions in favor of the present King of Great Britain, and against all the true Friends of America, as in the Indictment is particularly set forth. To which Indictment the said Abraham Solomon Plead not Guilty. A Jury was called and sworn to try the Issue Who Returned their Verdict on Oath and Say that the said Abraham Solomon is Guilty. The Court having considered of his Offence Order that the said Abraham Solomon Pay a Fine of Ten Pounds to be disposed of as the Law directs pay Costs of Prosecution & Stand Committed until Sentence is performed."

III.

"The Jurors upon their Oaths Present That Jonathan Gibbs of Framingham in the County of Middlesex Gentleman at Boston in the County of Suffolk, on the twentieth day of February last Seditiously uttered Sundry words Contrary to a Law of this State as in the Presentment is particularly set forth. To this Presentment the said Jonathan Gibbs Plead Guilty.

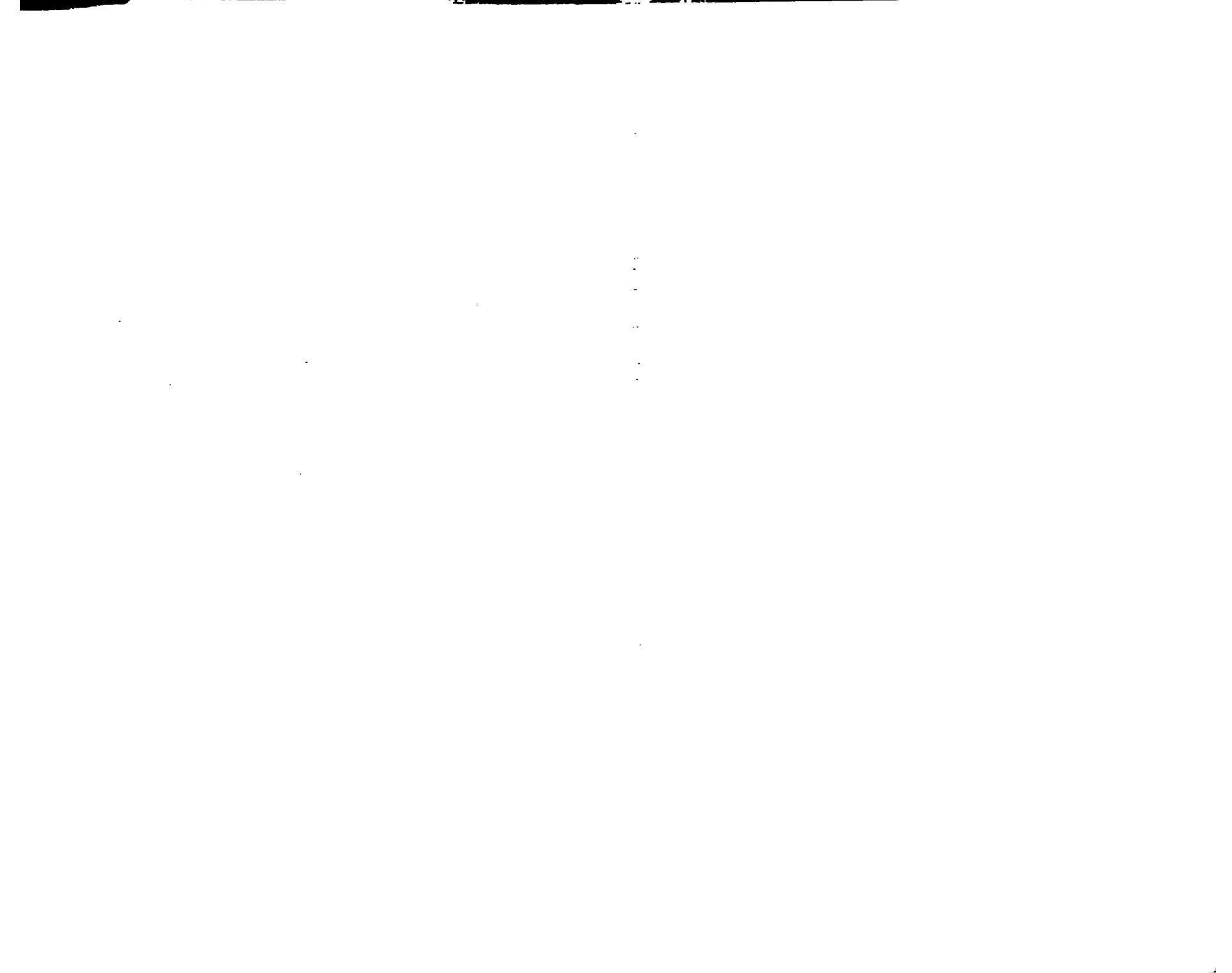
"Continued for Judgment."³

¹ The author of The Wentworth Genealogy (i. 342) says:—

² "He was arrested as sympathizing with the British Government in 1777, but promised support to the Revolutionary Government and was released."

³ Christ Church Registers and Massachusetts Magazine for July, 1794, iv. 448.

⁴ Records of the Court of General Sessions of the Peace, vol. [7]. — ten detached leaves, sundry Terms 1776 and 1777, leaves v. and vi. April Term, 1777, held at Boston 15 April, 1777.



IV.

Another paper is an original Report of Joseph Otis,¹ Deputy Gaoler, probably made in the regular course of his official duties, to the Court of General Sessions of the Peace. It gives the names of all persons held under his custody in the County Jail of Suffolk, in February, 1777, and includes, beside some held as Debtors and some under criminal charges, nine persons held for traitorous correspondence or as inimical to the States, and ten held as prisoners of war. This Report is as follows:—

"Boston Feb^r 18. 1777

A List of Prisoners in Boston Goal
Doe^r Church for holding a Traitors Correspondence
with the Enemy

John Hill for being Enemical to the States
Tho^r Mews for ditto
Tho^r Edwards for ditto
Crean Brash for ditto
Benj^d Davis for ditto
Hopestill Capen for ditto
Miss Hill & Daughter for attempting to Carry
Intelligence to the Enemy
John Dean Whitworth A prisoner of War
Seven Men & two Women prisoners of War taken
Near fort Cumberland²
Rich^d Laby for theft Sentens'd
Mary Young Sentens'd
Mary Noax [or Voax] Sentens'd
John Lovell for theft not had his trial
Five Debtors

A True List of Prisoners
Attest Joseph Otis Dep^r Gaoler³

The political prisoners whose names are found in this List vary much in the degree of their prominence in history. Some live in

¹ For a notice of Joseph Otis see ante, pp. 61-62.

² Probably the fort on Chignecto Bay at the head of the Bay of Fundy, on the northwest coast of Nova Scotia, in the county of Cumberland, somewhat known in the campaigns of 1758-1760. (Province Laws, iv. 136, 242, 348.) There was also a Fort Cumberland in Maryland.

³ Suffolk Court Files, dxxviii. 53478.

questionable distinction, and others, whatever their standing at the time, have been nearly or quite forgotten.

In his Diary, already referred to in this paper, Ezekiel Price says, under date of 20 April, 1776: "Several of the active Tories have been examined by the Court of Inquiry, and committed to jail for trial;" and, under date of Wednesday, 15 May, "Went to Boston. A number of Tories were examined before the Court of Inquiry."¹ Among these, doubtless, were some of the prisoners on the List now before us.

DR. BENJAMIN CHURCH, JR., needs but brief mention, so much has been written as to his life and career, in their general features. A man of strongly marked character, of varied accomplishments, with ability both executive and administrative, talented, almost endowed with genius, full of energy and force, recognized as a man to lead men and to shape events, one of the earliest and most active in that remarkable body of Boston men that engineered the struggle of the Province against the mother country, — a patriot at the outset, and "the first traitor" to that cause, detected, convicted by Court Martial, examined and expelled by the Provincial Congress, exiled, and vanishing from sight in one of the unknown tragedies of the sea, his career and his fate are alike mysterious.

While the story of his defection and of the events that followed it has been told by many,² much less has been said of the services which he rendered the American cause in the five years before the breaking out of the War.

¹ Proceedings of the Massachusetts Historical Society for November, 1863, vii. 252, 255.

² Memorial History of Boston, ii. 563, iii. 111, 145, and 175, and authorities cited; Narrative and Critical History of America, vi. 145, and authorities cited; Frothingham's Life and Times of Joseph Warren, p. 225; Frothingham's History of the Siege of Boston, p. 238; Loring's Hundred Boston Orators (Second edition), p. 39; Massachusetts Archives, cxix. 836; New England Historical and Genealogical Register for April, 1857, xi. 128; Sabine's Biographical Sketches of Loyalists of the American Revolution (edition of 1864), i. 318; Gordon's History of the American Revolution (London, 1783), ii. 134-136; Thacher's Military Journal during the American Revolutionary War (edition of 1828), pp. 28, 39 and note; Moore's Diary of the American Revolution, i. 24; Loring's Field Book of the Revolution, i. 568; Siege and Evacuation Memorial, p. 161; and Province Laws, v. 912, 915.

The Records of the Town of Boston show how varied and conspicuous these services were, and how prominent a part he played in this stormy period. He is found in company with John Hancock, John and Samuel Adams, Dr. Warren, Josiah Quincy, and other leading citizens in the measures which the town adopted as the different exigencies of the occasion required. To name some of the important committees¹ on which he served is enough: (1) 6 March, 1770, "to wait on his Honor the Lieu^t. Governor" after the Boston Massacre (p. 2); (2) the next year, 12 March, to consider of "some Suitable Method to perpetuate the memory of" it (p. 47), reporting later—

"That for the present the Town make choice of a proper Person to deliver an Oration . . . to commemorate the barbarous murder of five of our Fellow Citizens on that fatal Day, and to impress upon our minds the ruinous tendency of Standing Armies in Free Cities, and the necessity of such noble exertions in all future times, as the Inhabitants of the Town then made" (p. 48);

and (3) on the nineteenth of the same month to consider a Report submitted "to vindicate the Character of the Town Inhabitants grossly injured in . . . a Narrative of the Tryals &c. said to be printed by permission of the Hon^m Court, and also in several anonymous publications" (p. 49); (4) On the sixth of May, 1772, "to draw up Instruction to the Four Gentlemen this Day chose to Represent the Town of Boston in the next General Assembly—Hon^m Thomas Cushing, M^r Samuel Adams, the Hon^m John Hancock Esq. and M^r William Phillips" (p. 80), — a most forcible Instruction (pp. 83-86), to which was added one touching the "salaries of the Judges of the Superior Court" (p. 88); (5) 28 October, 1772, with "Mr. Samuel Adams and Dr. Joseph Warren . . . to draw up an Address to the Governor" on the latter subject (p. 89), which, brief and sharp, "passed in the Affective—*Nem Con.*" (p. 90); (6) 2 November, 1772, one of twenty-one persons appointed by the Town, on Motion of Samuel Adams, as "a Committee of Correspondence . . . to State the Rights of the Colonists and of this Province in particular, as Men, as Christians, and as Subjects" (p. 98), and one of a sub-committee to draught the letter

¹ Boston Record Commissioners' Reports, xviii., *passim* (corrected by the original Record.)

"to the several Towns in this Province and to the World" (p. 94). The draught stating the Natural Rights of the Colonists as Men, as Christians, and as Subjects, is given in full under those heads in the Town Records (pp. 96-99), with the "List of Infringements & Violations of Rights" (pp. 99-106), and the Letter "to the other Towns" (pp. 106-108); (7) Several times upon the Committee to select the Fifth of March Orator. On the fifth of March, 1773, he was himself the Orator, "unanimously chosen," and his "Eloquent and Spirited Oration [was] delivered . . . to a large and crowded Audience, and received by them with great applause . . . at the Old South Meeting House at 4 past 12, O'Clock A.M." (p. 109); (8) 28 March, 1773, he was on a Committee "to vindicate the Town from the gross misrepresentations and groundless charges in his Excellencies Messages to both Houses of the General Assembly respecting the proceedings of the Town at their last Meeting," whose spirited Report, read by Samuel Adams, given in full (pp. 120-125), "was accepted by the Town *nemine contradicente*, and Ordered to be Recorded on the Towns Book, as the Sense of the Inhabitants of this Town" (p. 125); (9) 5 May, 1773, he was of the Committee to "give Instructions to the Representatives,—the Hon^m Thomas Cushing Esq. M^r Samuel Adams, Hon^m John Hancock Esq. William Phillips Esq."—whose vigorous Instructions, given in full (pp. 132-134), were "unanimously . . . accepted" and ordered to be "printed in the Several News Papers" (p. 134); (10) 10 May, 1774, he was again upon a Committee to prepare Instructions to the Representatives, its Chairman, and associated with John Adams, Dr. Warren, Josiah Quincy, and other leading men (p. 169); (11) 19 July, 1774, on a Committee with Samuel and John Adams, Josiah Quincy, Dr. Warren, Thomas Cushing, John Hancock, Rev. Dr. Chauncy, Rev. Dr. Samuel Mather and others, "to consider & Report a Declaration to be made by this Town to Great Britain & all the World" (p. 183); (12) 25 September, 1774, he was again one of a Committee "to prepare Instructions for our Representatives," and, with Dr. Warren and Mr. Nathaniel Appleton, was chosen a Member of the Provincial Congress (p. 191); (13) 3 November, 1774,— "At an Adjournment of the Port Bill Meeting"—he was put on the Committee which reported on "what are the proper Ways & Means to secure the Peace & good Order of the Town,"—touch-

ing mainly the presence of "Sundry Regiments of his Majesty's Troops . . . contrary to Law, & to the great Annoyance & Detriment of his Majesty's good Subjects of this Province, now stationed in the Town of Boston, in a Time of profound Peace," — and on that to wait upon the Governor therewith (pp. 194–195); (14) "At a Meeting of the Inhabitants of the Town of Boston p Adjournment of the Port Bill Meeting," 7 December, 1774, he was chosen one of a Committee of sixty-two headed by "The Hon^m Thomas Cushing Esq." as "a Committee of Inspection, & to carry the Resolutions of the Continental Congress into Execution;" and one of a Committee of seven "to draught a Vote of Thanks" to the "Sister Colonies" for their "benevolent Assistance" (pp. 205–207); (15) 14 December, 1774, a Committee consisting of "M^r Samuel Adams, Dr Benjamin Church Dr Joseph Warren" was appointed to consider and report upon the "Answer to a Letter written to General Gage by the Hon^m Peyton Randolph Esq. President of the late Continental Congress," on the ground of its containing "diverse Gross Mistakes, to the Prejudice of this Town" (p. 207). Their Report, made 30 December, upon this answer of General Gage is given in full (pp. 209–211) and, "considered Paragraph by Paragraph," was accepted, "New. Con." (p. 211); (16) On the same day, with "The Hon^m Thomas Cushing Esq. M^r Samuel Adams, Hon^m John Hancock Esq. Dr Joseph Warren, M^r Oliver Wendell, M^r John Pitt," he was chosen one of the "Seven Delegates for the intended Provincial Congress" (p. 211); (17) On the sixth of March, 1775, he was on the Committee to wait upon "Joseph Warren Esq., the Fifth of March Orator of that year, and "require of him a Copy of said Oration for the Press"; and he was also appointed on the Committee to select the Orator for the next year (pp. 215, 216). Thereafter, ominously, his name no longer appears upon the Records of the Town.

On the thirty-first of July, 1775, Dr. Church appears as a member of a Committee with Major Joseph Hawley and Mr. Joseph Wheeler "with such as the honorable Board shall join, to bring in a Bill for vacating the Commissions of all such Civil Officers as have been appointed by the Governor with the Advice of Council."¹

¹ House Journal, p. 26; Province Laws, v. 511.

JOHN HILL has left nothing behind him but the shadow of a name. Perhaps he was the son of Alexander and Thankful (Allen) Hill, who was born in Boston, 22 July, 1748.¹

THOMAS EDWARDS and THOMAS MEWS^E are said by Sabine to have been arrested by order of the Council in April, 1776. Edwards is named in the List in the Town Records, previously given,² of those who "have been endeavouring since the 19th of April, 1775, to counteract the united Struggles of this & the neighbouring States;" and Mewse is included in the List of Loyalists.³

"Miss HILL & DAUGHTER" are not identified, unless, perhaps, they were connected with the equally obscure John Hill.

JOHN DEAN WHITWORTH, according to Sabine (ii. 595), was a "Lieutenant in the Queen's Rangers, Taken prisoner in 1776, sent to Boston, examined and put in jail by Order of the Government of Massachusetts." He was a son of Dr. Miles Whitworth,⁴ and was born in Boston, 26 November, 1749.⁵

BENJAMIN DAVIS was a merchant of Boston; was one of those "proscribed as enemies of the new State;"⁶ and he is named in the List of the Loyalists.⁷ In the copy of the Broadside containing a List of the Protesters against the Solemn League and Covenant, and a List of the Addressers of Hutchinson, in 1774, reprinted by the Massachusetts Historical Society,⁸ Davis's name appears in both Lists. He is described as of "Town Dock, Huckster." He was also an Addresser of Gage, in 1775; and his name is included in the Act of 16 October, 1778, chap. 24, "to prevent the Return to this State, of certain persons . . . who have left this State . . . and joined the Enemies thereof."⁹ The Letters of John Andrews

¹ Boston Town Records. Cf. post, p. 275; Shurtleff's Topographical and Historical Description of Boston (Third edition), pp. 186, 226; Memorial History of Boston, ii. 496; Boston Record Commissioners' Reports, xvi. 118, 119, 122, 124, 127, 136, 137; and xx. 68; and Sabine's Biographical Sketches of Loyalists of the American Revolution (edition of 1884), i. 536.

² See ante, pp. 260, 261.

³ Memorial History of Boston, iii. 175.

⁴ See ante, p. 261, note 8.

⁵ Memorial History of Boston, ii. 568.

⁶ Ibid. iii. 176.

⁷ 1 Proceedings of the Massachusetts Historical Society for October, 1870, xi. 292–295.

⁸ Province Laws, v. 512, 1004–1009.

⁹ Boston Town Records.

under date of 7 October, 1774, mention that "Ben Davis has let his Store on the Dock for the use of the troops."¹ He left Boston with his family and went to Halifax; in his passage thence to New York he was captured in the ship "Peggy," carried into Marblehead, sent to Boston, and there imprisoned. Ezekiel Price, in his Diary, thus refers to his arrival:—

"Monday, July 29. [1776]. "Brought to town Benjamin Davis and a number of other Tories, who were committed to jail. They were taken in a ship from Halifax to New York: she had a valuable cargo on board."²

Davis seems to have had a hard time in jail, as appears by a letter to James Bowdoin, dated 10 October, 1776. He was a man of wealth and is said to have lost some £1000 sterling when he left Boston, besides £1500 sterling on his capture, as well as large amounts due him but never recovered. He was proscribed and banished in 1778, and is said to have been in New York at the close of the War.³

HOPESTILL CAPEN, the son of John and Elizabeth (Hall) Capen, was born in Dorchester, Massachusetts, 4 March, 1730-31.⁴ Like Davis, he was a merchant of Boston; and his place of business, at the North End, was the prototype of the Department Stores of the present generation. His name, too, like that of Davis, is found in the List of the Proscribed of the Loyalists, on the Town Records, and also in the Lists of the Addressers of Hutchinson,—where he appears as of Union Street, a "Carpenter, lately a shopkeeper,"—and of the "Protesters." He does not appear to have found time for much service in the affairs of the Town, though he was chosen, 13 March, 1770, a "Scavenger" from Ward 5.

Capen was one of the pillars of the excellent and highly respected company of the Sandemanians, in behalf of whom, 7 April, 1773, accompanied by Edward Foster, he "attended and acquainted the Select Men that they had lately lost their House of Worship

¹ Proceedings of the Massachusetts Historical Society, for July, 1865, viii. 374.

² *Ibid.* for November, 1863, vii. 261.

³ Sabine's Biographical Sketches of Loyalists of the American Revolution, (edition of 1864), i. 259, 260.

⁴ Dorchester Town Records.

by Fire, and therefore praying that they might have the use of the North Lattin School upon Sabbaths."¹ Benjamin Davis was also of the same sect; indeed, the Sandemanians were mostly Loyalists, and caused the Patriots endless trouble.

According to Sabine (I. 298), Capen was arrested by order of the Council, in 1776, and committed to jail; and in October of that year a petition was started by his wife,² backed by some eighty citizens of Boston, setting out the sufferings of herself and children in consequence of his arrest, and saying that he was an honest and peaceable citizen, and had rendered valuable service in trying to save the property of Absentees during the occupation of the town by the British. He, himself, in the following December, complained of the severity of his treatment and of his long and close imprisonment for nearly five months, in a written appeal to Sheriff Greenleaf, who, feeling himself personally aggrieved, laid it before the House of Representatives;—Capen also drew up a long application to the Court of Inquiry, which he expected to take up his case. Like several others whose names are included in the Town List of 17 May, 1777,³ he was in jail at that date, and that action of the Town must have looked both to the trial of those already confined, and to the apprehension of such others as had not then been arrested.

After the close of the war, Capen seems to have become reinstated as a safe citizen and of "good moral character," since, on 26 July, 1786, at a meeting of the Selectmen, he was one of twelve "Persons . . . drawn Jurors for a Maritime Court on 9th of August next,"—the name of "Paul Reveire Esq" being the one drawn immediately before Capen's;⁴ and in 1795 he was living near the Market. He died in Boston on the morning of Monday, 2 March, 1807, at the age of 76.⁵

¹ Boston Record Commissioners' Reports, xxiii. 171. The sites of all the places of worship of the Sandemanian Society in Boston are identified and described by our associate Mr. Henry H. Eedes in a communication, illustrated by Plans, made to the Society at its Stated Meeting in March, 1866. See *post*, vi. 108-130.

² *See post*, p. 298, note 2.

³ Boston Record Commissioners' Reports, xviii. 261, 262.

⁴ *Ibid.* xxv. 317.

⁵ Columbian Sentinel, No. 2304, of Wednesday, 4 March, 1807, which states that the funeral will take place on Thursday afternoon "from his late house, No. 47 Hanover Street." His intestate estate was administered by Thomas

CREAN BRUSH was a somewhat striking figure, and his life had in it no little of incident and adventure. He had a streak in his make-up of something quite alien to the ordinary New-England type of character of that day, and he stands out, in many points, in sharp contrast to his fellow prisoners. What has been written of him has given him a questionable notoriety, and he has not escaped unsparing judgment as well as some harsh epithets. The various accounts are substantially the same, and, to a considerable extent, seem to be repetitions one of another.¹

Brush was born in Dublin and bred to the law. Beyond this little seems to be known of his career in Europe. He emigrated to America about 1762, and settled in New York, where he was admitted to practice and held office under the Provincial Secretary. He was a member of the Assembly of New York, where he gained some note and influence. He was Clerk and Surrogate of Cumberland County. In 1771 he removed to the "Hampshire Grants," where he held some 50,000 acres, and in the controversies between the settlers of the Grants and New York he took an active part and was a strong partisan of New York. In the Grants he came across Ethan Allen, who married his step-daughter Frances.² Brush came to Boston in the autumn of 1775, and soon found favor with General Gage, as he did later with General Howe. His energy, daring, and unscrupulousness made him an efficient agent, and ability like his could easily find a field of operations. Perhaps his unscrupulousness was not too obvious, considering that the duties committed to him pre-supposed integrity and rigid fidelity to a trust; or possibly, under the circumstances, it was not considered by any means a disqualification. The —

Copes of Boston, merchant, in whose account, settled 19 October, 1807, is a charge for gravestones and another for setting them. (Suffolk Probate Files, No. 22,861.) See *post*, p. 238, note 2.

¹ Sabine's Biographical Sketches of Loyalists of the American Revolution (edition of 1864), i. 270-272; Narrative and Critical History of America, vi. 206, and authorities cited; Memorial History of Boston, iii. 97, and authorities cited; Siege and Evacuation Memorial, p. 164-166; and Collections of the Connecticut Historical Society, ii. 201.

² Mrs. Frances Buchanan, who has been described as a "dashing" young widow, was born 4 April, 1760. She was married to Allen, as his second wife, at Westminster, Vermont, 9 February, 1784 (Willard S. Allen's Genealogy of General Allen of Windsor, Connecticut, and Some of his Descendants, p. 6.) Cf. Allen's American Biographical Dictionary (Third edition), pp. 18-20.

"Commission by his Excellency, the Hon. Thomas Gage, Capt. General, Governor-in-Chief &c &c To Crean Brush, Esquire:" issued 1 October, 1775, concerning "large Quantities of Goods, Wares and Merchandise, Chattels and Effects . . . left in the Town of Boston,"—issued in order "To quiet the Fears of the Inhabitants . . . and take all due care for the Preservation of such Goods" authorizes Brush "to take and receive . . . all such Goods . . . as may be voluntarily delivered . . . [he] giving Receipts for the Same . . . [and] to take all due care thereof . . . and to deliver said Goods when called upon . . ." with a memorandum at the foot that "proper Apartments in Faneuil Hall are provided for the Reception" of the same.¹

Early in the following year Brush proposed to General Howe, and received authority, to raise a body of three hundred volunteers. Just before the Evacuation of Boston, the Proclamation issued by General Howe on 10 March, 1776, gave full scope to the peculiar abilities of Brush, and under this he acted with his usual vigor, extending its operation somewhat beyond its original purport. Howe sets forth his expectation, that —

"as Linnen and Woolen Goods are Articles much wanted by the Rebels, and would aid and assist them in their Rebellion, . . . all good Subjects will use their utmost Endeavors to have all such Articles convey'd from this Place;" and directing that "Any who have not Opportunity to convey their Goods under their own Care, may deliver them on Board the Minerva . . . to Crean Brush, Esq . . . who will give a Certificate of the Delivery, and will oblige himself to return them to the Owners, all unavoidable Accidents accepted [sic]." Coupled with this is the threat that "If after this Notice any Person secretes or keeps in his Possession such Articles, he will be treated as a Favourer of Rebels."²

Armed with this authority Brush did not wait for voluntary delivery, but broke into dwelling-houses and shops, and carried off the spoils. Soldiers and sailors were not slow to follow his

¹ A printed copy of this Commission, in the form of a Broadside, is in the Library of the Massachusetts Historical Society, and is reprinted in the Siege and Evacuation Memorial, p. 164.

² A fac-simile of one of the original Broadsides, in the Library of the Massachusetts Historical Society, is in the Memorial History of Boston, iii. 97.

example, and "violence and pillage" were the rule. He took passage himself in the brigantine *Elizabeth*, which was captured, as she followed the departing fleet, by Captain Manly, and brought back to Boston.¹ The Diary of Ezekiel Price refers to this capture, under date of 6 April, 1776:—

"In the afternoon, Ed. Quincy stopped here. He came from Boston, and says that Captain Manly was in Boston, and told there that he had taken out of the fleet a brig laden with Tories and Tory goods, and other effects, which they plundered in Boston . . . It is said this was their richest vessel in [the] fleet: had eighteen thousand pounds sterling in cash, besides an exceedingly valuable cargo of European merchandise . . ." [And on Tuesday, 9 April:] ". . . At noon, a traveller from below says that he heard Captain Paddock and Captain Gore were among the Tories taken in the transport brig by Captain Manly. Afterwards several other travellers from below passed; but they did not hear of Paddock or Gore being in that vessel, and no other of note but Bill Jackson and Crane [sic] Brush."²

Brush was thrown into the Boston jail, where he remained in close confinement for some nineteen months. His wife joined him there, and, besides having the solace of her company, he managed through her ingenuity and the use of some of her garments to effect his escape on the fifth of November, 1777. He started for New York, going first to Vermont to look after his large landed interests. His estate was afterward confiscated, and of all his great possessions only a small part was ever recovered by his heirs. Unfriended, redress refused by the British Commander, deserted alike by friends and foes, he shot himself, in May, 1778.

¹ Captain John Manly was commissioned by Washington, 24 October, 1776. Besides this capture he had already, in November, 1776, taken ordnance and military stores. He died in his house at the North End, Boston, 12 February, 1793, at the age of 60 years. (*Columbian Centinel*, No. 330, of Saturday, 16 February, 1793, which contains a long obituary notice of Captain Manly; and the *Massachusetts Magazine* for February, 1793, v. 128.) The *Trinity Church Register* contains this entry:—

"1793, August 28, Mrs. Hannah Manly, wife of Jno Manly, Esq^r."

² *Proceedings of the Massachusetts Historical Society* for November, 1863, vll. 248, 250. This passage is quoted somewhat incorrectly in the *Siege and Occupation Memorial*, p. 182.

V.

Another paper is the Record of a case against this same Crean Brush, evidently growing out of his acts under General Howe's Proclamation, which was tried while he was in jail.—

"Upon the Presentment against Crean Brush for stealing sundry Goods from John Rowe Esq. the said Crean Brush filed certain pleas in order to Quash said Presentment, which are on file. The Court are of opinion that said Presentment ought to be quashed upon his first Plea."³

There is also another case which may have originated in the same way. At the July Term, 1777, John Hill of Boston recovers judgment in a plea of the case against Crean Brush for £2. 8^s 1^d lawful money, and costs.⁴

The next papers among those presented are a group of five, found among the Early Court Files of Suffolk. They relate to a Suit brought in behalf of "the Government and People of the State of Massachusetts Bay" against Samuel Tarbell of Groton. It was brought in the name of Perez Morton, acting in the absence of Robert Treat Paine, Attorney General, on a Plea of Debt, upon a Bond given by the Defendant. The Bond was apparently given and the liability incurred thereon, under the provisions of the Act, already referred to, of 10 May, 1777, ch. 48,⁵ the first section of which impowers —

"the Selectmen of each town, or the Committees of each Plantation within this State [to call] a meeting . . . to choose by ballot, some person who is firmly attached to the American Cause, to procure and lay before the Court hereafter described, the evidence that may be had of

³ *Records of the Court of General Sessions of the Peace*, vol. [7],—ten detached leaves, sundry Terms in 1776 and 1777—leaf iv., last part of January Term, 1777. What the plea was does not appear; it may have been the authority given by the Commission. All else save this brief record has been lost.

⁴ *Records of the Inferior Court of Common Pleas* (1778), xxix. 52. Cx. ante, p. 288.

⁵ *Province Laws*, v. 614, 724-726.

the inimical dispositions toward this or any of the United States, of any inhabitants of such town, who shall be charged . . . of being a person whose residence in this State is dangerous to the public peace or safety."

It may, possibly, however, have been given under other circumstances and conditions outside of this special provision.

These papers include the original Writ sued out, the beginning of the proceeding, and the Return thereon of the officer serving it; the Bond sued upon; the Resolve of 28 April, 1778, impowering the institution and prosecution of the Suit; and the Bill of Costs, both the original and a copy. The Writ sets out the whole case and contains all the elements of the Declaration. The Return contains,—and in that respect is, for several reasons, valuable as well as interesting,—a description of the real estate owned by Tarbell, and a schedule, more or less complete, of the farm tools and implements of a "husbandman" of that day.

The Bond is the original obligation given, with all the signatures thereupon, and the little seal of red wax affixed at the time. The Resolve is a duly attested copy, produced in Court as the authority under which the proceeding was had. The Bill of Costs has some points of interest, as all such papers have, aside from its original operation.

In the Records of the Inferior Court of Common Pleas are found the final disposition and record of the case. The entire Pleadings in the case are probably no longer in existence, but the substantial portions have been preserved, and these, with the Record, present the case with all the fulness necessary to an understanding of it.

VI.

"Suffolk ss. The Government and People of the Massachusetts-Bay in New England.

To the Sheriff of our County of Middlesex his Under-Sheriff, or Deputy, or to either of the Constables of the Town of Groton [sic] in our same County Greeting.

We Command you to Attach the Goods or Estate of Samuel Tarbell of Groton aforesaid, Husbandman to the Value of Two thousand Pounds, and for want thereof to take the Body of the said Samuel (if

he may be found in your Precinct) and him safely keep, so that you have him before our Justices of our Inferior Court of Common Pleas next to be holden at Boston within and for our said County of Suffolk on the second Tuesday of July next: Then and there in our said Court to Answer unto Perez Morton of Boston aforesaid Esq; who sues in behalf of the Government & People of the State of Massachusetts Bay, in a Plea of Debt, for that the said Samuel at said Boston on the fourth Day of December last, by his Obligation of that Date, duly executed, and in Court to be produced, bound himself to the said Government & People of said State in the sum of two thousand pounds, to be paid to the said Government & People on demand: Yet tho' requested, the said Samuel hath never paid said sum to the said Government & People, nor to the said Morton for their use, but detains it To the Damage of the said Perez Morton, who sues as aforesaid as he saith the Sum of Two thousand & twenty Pounds, which shall then and there be made to appear, with other due Damages: And have you there this Writ, with your Doings therein. Witness, Thomas Cushing Esq; at Boston this twenty fourth Day of April in the Year of our Lord, One Thousand seven Hundred and Seventy Eight.

Ezek'l PRICE Cler

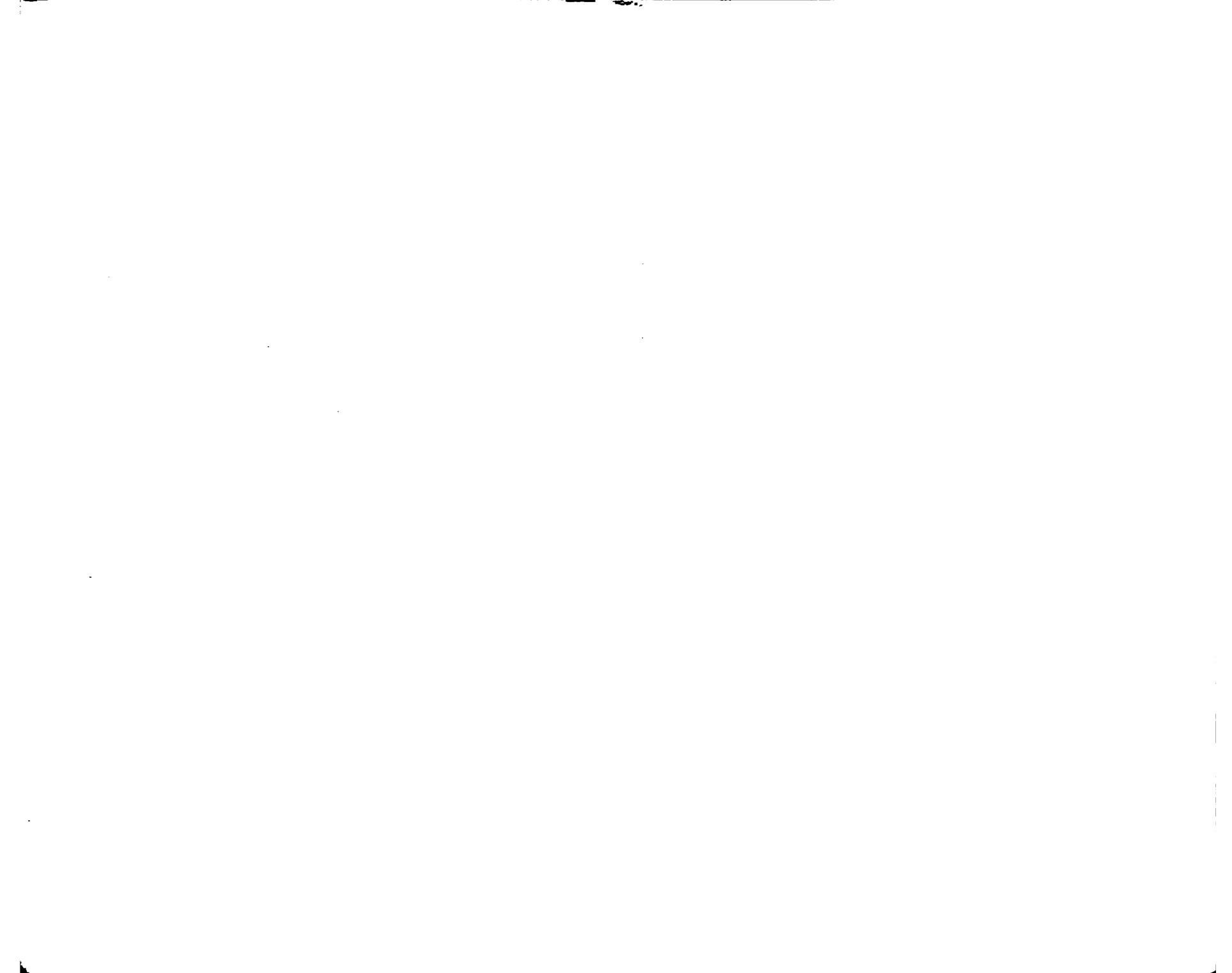
"Mr. Officer

Attach to y^e Value commanded if to be found if not as much as can be found

P Morton

"midd^e ss : Groton April 2 [] : 1778

I attacht four peices of land lying in Groton afores^d one peice thereof lyeth westerly from Groton meeting house where the within Named Sam^r Dwell Containing thirty five acres (more or less) bounded Easterly & Southerly by a town road Northerly & westerly by land of Henry Farwell with a Dwelling house Barn Corn Barn two out houses Cyder mill & press all standing on the same one other peice of land lying near tarbells fordway Containing twenty acres (more or less) Bonnded westerly by Lan[ca]ster river (So Called) one other peice lyeth on the west side of said river & Containis six acres (more or less) bounded [eas]terly by said river & southerly by a town way also one other peice lying near ranglin swamp (so Called) Containing fifteen acres (more or less) as the same is Butted & bounded all the afores^d peices of land was Claimed by the within named Samuels late father Tarbell dec^d & now reputed to be the within Named Sam^r Estate I also attacht one pair of oxen one Cart with Iron Bound wheels & Cart ladders also one pair of new Cart wheels one riding Stay & the tacklin



thereto belonging also about one thousand of White pine Boards about one Hundred of [oak] sittwork and Some pine timber Hewed and two Plows and about twelve acres of rice now standing & growing on the Ground all reported to be the within Named Sam^t Estate the Day above^d left a Summons at the last and usual [place] of the within Named Sam^t abode in Groton in said County

Morton's
JAMES PRASCOY Sheriff¹

[Endorsed]

Writ	
Morton vs Tarbell	Travel £1. 5
July 1778	Service — 6
NE ²	1:10 [sic]

VII.

" Know all men by these Presents That I Samuel Tarbell of Groton in the County of Middlesex & State of Massachusetts, Husbandman am holden & stand firmly bound & obliged unto the Government & People of said State, in the Sum of Two Thousand Pounds Lawful money of said State to be paid unto the said Government & People, to the which payment Well & Truly to be made I bind myself, my heirs Executors & Administrators firmly by these Presents Seal'd with my Seal this fourth day of December A.D. 1777 —

The Condition of the Above Obligation is such That whereas the Above bounden Tarbell is admitted as a witness on behalf of the Government & People of Said State, & any & all the New England States, when & wherever he may be wanted — And if the Above bounden Tarbell shall well & Truly from Time to Time & at all Times during y^e Several sessions of the Superior Court of Judicature Court of assize & Genl Gaol Delivery in any & all the Countys within said State of Massachusetts, & During the Several sessions of the Superior Court of Judicature within & for the Several Countys within the State of New Hamp^s and also Such Courts as he shall be Notified to appear at in the

¹ Suffolk Court Files, dxxix. 92,005:1.

² This name is here written cornerwise. The writs at this period usually bear, somewhere upon the back, the signature of the plaintiff's attorney. Morton's autograph is almost invariably written, in manner and place, as above.

³ N. E., as here used, stands for New Entry.

Other New England States — personally appear & attend all & every of the said Courts, & give Evidence in behalf of the Government & People of the State or states where any such Court or Courts shall be respectively held, of what he Doth or Shall Know relating to any Bill of indictment which hath been found or may from Time to Time be laid before y^e Grand Jurors of any County in either of said states, on behalf of the Government & People of any or either of said states, Concerning any Matter or Thing whatsoever against any person or persons whomsoever for & during the Term of Two years next Coming, & shall also during said Term of Two years to the utmost of his Power & ability endeavour to discover, Disclose & and from time to time make Known to some person or persons Now in authority in y^e respective States afores^d as independant of Great Britain of all Plots, plans, Treasons, or Conspiracies of what name or nature that he Now Knows, or shall hereafter know to be against the united states of america any or either of them, & of all & every person & persons anywise Concerned in forging or Counterfiting or altering any Bills, Notes, or other Currency of the united states afores^d any or either of them, or uttering the same & shall also in all matters & things, during said Term of Two years demean himself as a good & faithful Subject of the said United States & every of them — Then & in that Case y^e afores written obligation shal be void & of no Effect but otherwise to remain in full force Power Strength & virtue

SAM^t TARBELL
[and a red wax Seal]

Sign^d Seal^d & Dativ^d
in presence of
W^m DUNSMOOR
NATH^t PRABODY

Middlesex ss Dec^r 4th 1777 —
The above named Sam^t Tarbell personally appeared and owned this Instrument to be his free act & Deed
Coram OLIVER PRASCOY Just^t pascia.³

VIII.

" State of Massachusetts Baye
In Councill April 23^d 1778

Whereas Samuel Tarbell of Groton in the County of Middlesex, husbandman on the fourth Day of December last by his Bond became

¹ Suffolk Court Files, dxxix. 92,005:2.



bound and obliged unto the Government & People of Said State in the
Penal Sum of two thousand Pounds Conditioned that the Said Samuel
Tarbell shall well and truly from Time to Time during the Several Ses-
sions of the Superior Court of Judicature &c in any and all the Coun-
ties within Said State and during the several Sessions of the Superior
Court of Judicature &c within & for the Several Counties within the
State of New Hampshire &c personally appear and attend all and every
of the Said Courts and give Evidence in behalfe of the Government &
People of either of said States. But the Said Tarbell has nevertheless
abscended and failed of Appearing agreeable to the Conditions men-
tioned in the Bond aforesaid and there is great Danger of his disposing
of the whole of his Estate and the Publick thereby be defrauded. And
whereas the Honble Robert Treat Paine Esq Attorney General to this
State being necessarily absent attending the Superior Court. Ther-
fore Resolved That Perez Morton attorney at Law be and hereby is
empowered and directed to bring forward a Process upon the Bond
given by Said Tarbell on the fourth Day of December last in Behalfe
of the Government & People of the State of Massachusetts Bay and
pursue the same to final Judgment & Execution any Law or Custom
to the Contrary notwithstanding

Seat down for Concentration

John Avery D.W.S.

In the House of Representatives April 23^d 1778

Read & Concurred

J Phys Stat Phys

Concentrated to by the Campbell

True Copy

Attest Jno: Avery D^r Sec^r

¹ Suffolk Court Files, dxxix. 92,005 : 8. This Resolve has already appeared in print in Green's Groton Historical Series (iii. 110) but is here reprinted, inasmuch as this is a Copy taken from the Records and duly authenticated by the proper State official, and was read at the trial, and also because the former reprint contains some slight variations and one or two evident typographical errors.

10

"Suf: as Inf Ct Com Pleas July 1776

Morton for Gov' & People)

Pits Costs

W ^t ; & summons	0:	1:	8
Declar ⁿ in W ^t ; & sum ^r	0:	7:	0
Sheriff's fee	1:	10:	0
P ^t att 3 D ^r	0:	9:	0
Court fees on Entry	0:	10:	0
Exam ^s & filing Papers	0:	2:	0
	<hr/>	<hr/>	<hr/>
	2:	12:	8

B

EKK: Price Clever™

The action of the Court is thus set forth in the Records:—

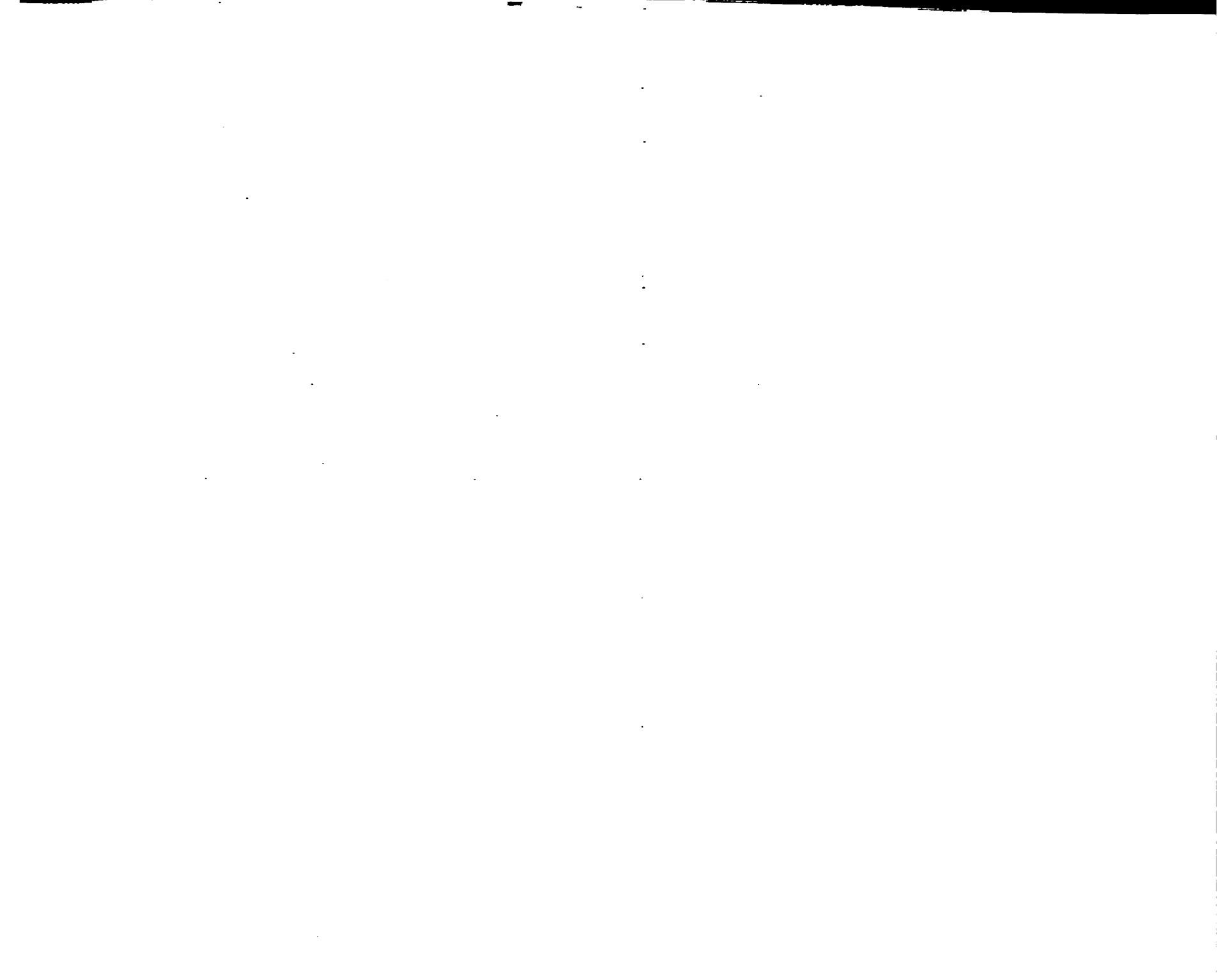
"The Government & People of the Massachusetts Bay in New England.

Suffolk sc. At an Inferior Court of Common Pleas, begun and held
at Boston, within and for the County of Suffolk, on the second
Tuesday of July, (being the fourteenth day of said Month)
Anno Domini. 1778.

Before the Hon. THOMAS CUSHING
SAMUEL NILES
SAMUEL PEMBERTON }
JOSEPH GARDNER } Esq^r
Justices

"Perez Morton of Boston in the County of Suffolk, Esquire, who sues in behalf of the Government and People of the Massachusetts Bay, plit vs Samuel Tarbell of Groton in the County of Middlesex, Husbandman, Dft, in a plea of Debt, as in the Writ dated the twenty fourth day of April last is fully set forth. And now the Defendant altho' solemnly called to come into Court did not Appear but made Default.

¹ Suffolk Court Files, dxxix. 62,605:5. Paper No. 4 is an attested copy of the same.



"It is therefore Considered by the Court that the said Perez Morton who sues as aforesaid, recover against the said Samuel Tarbell the Sum of Two thousand Pounds, lawful money Debt being the penalty of the Bond sued on, and Costs of Suit, taxed at £ 2 " 19 " 8
Exon issued Nov. 6 1778."¹

PEREZ MORTON, the nominal plaintiff in the Suit, was born at Plymouth, Massachusetts, 22 October, 1750.² He was descended from George Morton, who came to Plymouth in the Ann, in 1623, and whose eldest son, Nathaniel, was Secretary of the Plymouth Colony for forty years (1645-1685) and the author of New Eng-

¹ Records of the Inferior Court of Common Pleas (1778), xxxix. 87.

² The Wentworth Genealogy (edition of 1878), i. 521, which see for many facts concerning Perez Morton and his accomplished wife and her family connections, drawn from family records and papers furnished the author by Mr. Morton's descendants. I have been unable to find any contemporary record of Mr. Morton's birth. His name, however, is in the List of Freshmen admitted to Harvard College in July, 1767. It is there stated that he was then a resident of Boston; that his birthday was 2 November, 1751; and that his age at admission was sixteen years and eight months (Faculty Records, iii. 86). Loring, in his Hundred Boston Orators (Second edition, p. 129), says that he was born in Plymouth, 18 November, 1751. It will be observed that between the date in the Faculty Records and that given by Loring there is a difference of just eleven days, — the number requisite to reconcile Old Style with New Style. It will also be seen that between the date furnished by the family (22 October, 1750) and that found in the Faculty Records there is a difference of a year and eleven days. The fact that Morton's age is given as eighty-seven years at the time of his death, — 14 October, 1837, — strengthens the assumption that the date in our text is the correct one; nevertheless, the College record has strong claims to precedence, especially when it is remembered that it was probably made upon Morton's own statement; that Old Style had gone out in 1752, — just after Morton's advent; and that, in all probability, the date of his birth would have been expressed according to New Style; but even on this assumption the difference of exactly a year between these dates is yet to be accounted for. It seems clear, however, that Morton was born 22 October, Old Style, or 2 November, New Style, 1750 or 1751, and that Loring, erroneously assuming that 2 November represented Old Style, added eleven days to translate the date, as he supposed, to New Style. (*Cf.* ante, p. 206 note 4.)

I am indebted to our associate, Mr. Henry H. Edes, for this note, in the preparation of which our associate, Mr. William Coolidge Lane, and his obliging assistant, Mr. William Garrott Brown, in charge of the College Archives, have rendered invaluable assistance in dealing with the vexed question of the date of Mr. Morton's birth. I am also indebted to Mr. Edes for the notes on Joseph Morton and the White Horse Tavern which follow, on pp. 283, 284.

land's Memorial. The Secretary's brother Ephraim — from whom Perez Morton descended — was also "a man of considerable distinction in the Colony. He was, for many successive years, a member of the Council of War, and, with John Bradford, represented the town of Plymouth, in the first General Court, holden at Boston, after the union with Massachusetts."¹ Joseph Morton,² the father of Perez, settled in Boston, where he kept the White Horse Tavern, opposite Hayward Place.³ Perez Morton entered

¹ Preface to Judge Davis's edition of Morton's Memorial, p. iii. See also Province Laws, vii. 6. For the pedigree of Perez Morton, see Josiah Graville Leach's Morton Memoranda, p. 30, and Davis's Ancient Landmarks of Plymouth, pp. 188-190.

² Joseph Morton, son of Joseph and Mary Morton, was born in Plymouth 25 October, 1711 (Plymouth Town Records, i. 67.) His purpose of marriage with Anna (not Amiah) Bullock, of Rehoboth, was published 3 August, 1738, at Plymouth, and 26 August, at Rehoboth, where they were married, 4 September, 1738, by the Rev. David Turner (Rehoboth Town Records, ii. 158, the published copy of which erroneously prints this name Martin; Records of the Newman Church, East Province Centre, R. I.) Their first child, Perez, born at Plymouth 8 February, 1739 (Plymouth Town Records, i. 180) — the only one whose birth appears of record — died in early childhood. Joseph Morton was among those members of the First Parish in Plymouth who, in December, 1743, withdrew, during the Great Awakening, because of their disapproval of Whitefield's preaching and methods, formed the Third Parish, and built a Meeting-house in Middle Street (Precinct Book 1719-1813, p. 36.) The two Parishes re-united in 1784. The Records of the Third Parish contain the following entry, which has been furnished by Arthur Lord, Esq.: —

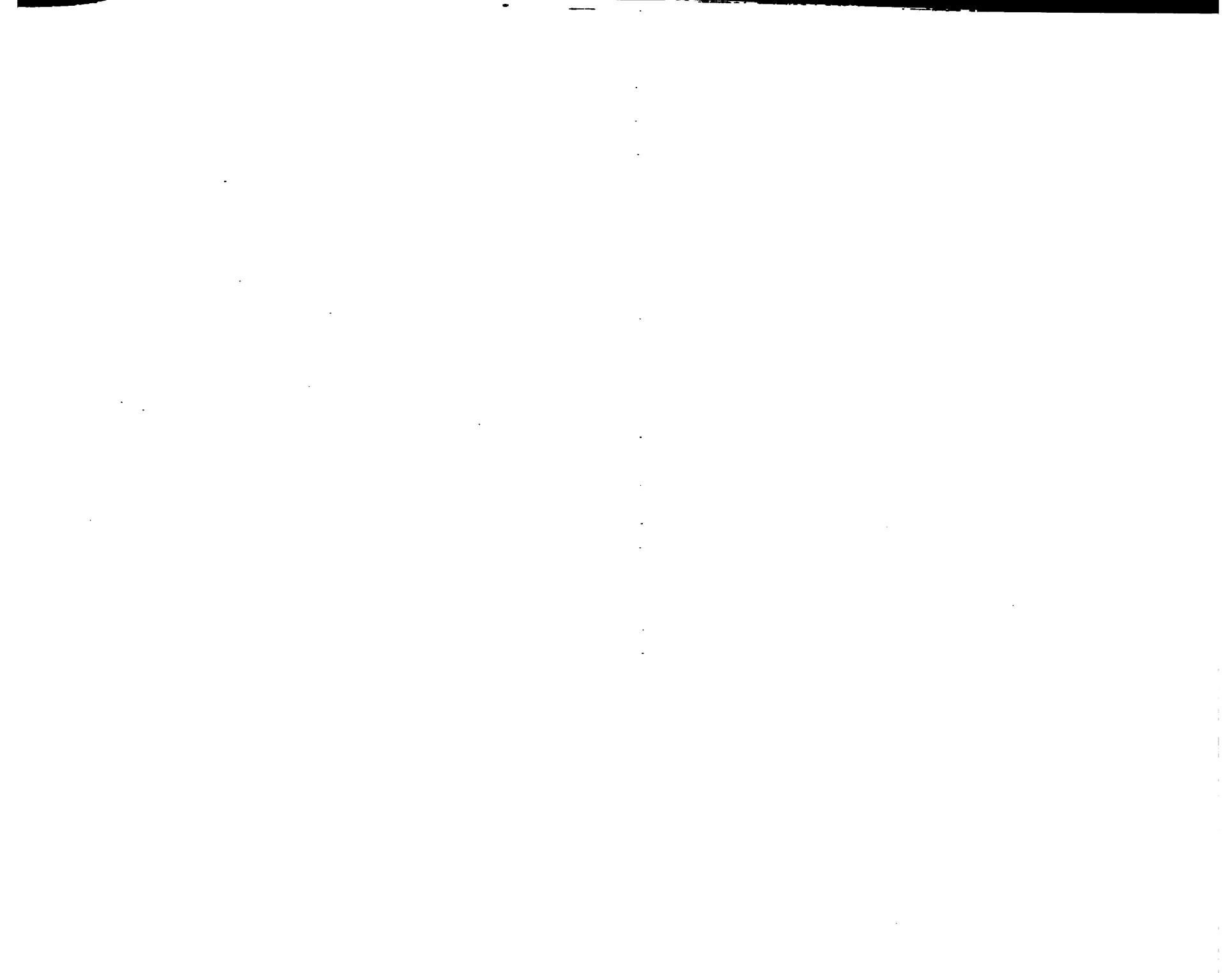
"April 21, 1784. I bapt^d Dimas and Perez the sons — Anne & Hannah the daughters of Joseph Morton — upon her, his wife, account."

Mrs. Morton died 8 April, 1759, and Mr. Morton married, as his second wife, Abigail Hersey, who died 9 May, 1791. He died 26 July, 1793. (The Wentworth Genealogy (edition of 1878), i. 521, *etc.*) The Columbian Centinel (xix. 41) of Wednesday, 31 July, 1793, and The Independent Chronicle (No. 1292) of Thursday, 1 August, 1793, record this death in these words: —

"At Groton, Mr. Joseph Morton of this town, A.D. 82."

The Massachusetts Magazine for August, 1793, also records Mr. Morton's death at Groton, but likewise without date. His will, dated 31 March, 1767, was proved 8 October, 1793. It names his son Perez Executor and is replete with valuable genealogical data. (Suffolk Probate Files, No. 20,211.) *Cf.* Davis's Ancient Landmarks of Plymouth, p. 190.

³ The White Horse Tavern estate had a frontage on Newbury (now Washington) Street, opposite Hayward Place, of 114 feet (including Fayette Court, 11 feet wide, which almost evenly divides it), and a depth of 306 feet from Washington Street nearly, if not quite, back to what is now Head Place. The site



the Boston Latin School in 1760 and graduated from Harvard College in 1771. He stepped at once into public notice, and was soon made Deputy Secretary of the Council of the Colony of Massachusetts Bay,—an office which he held during the momentous years 1775 and 1776.¹ He took a very prominent part in the affairs of the Town of Boston during the Revolutionary period as will be seen by the following extracts from the Town Records.

At the Town Meeting, 1 May, 1776, held "at the Old Brick Meeting House & adjourned to the Representatives Chamber," he was chosen one of the "Committee of Correspondence, Safety & Inspection," and served on it in 1776, 1777, and 1778.² At the meeting 23 May, 1776, when it was "Passed in the Affirmative unanimously" that "If the Hon^m Continental Congress" should declare for Independence, "the Inhabitants, will solemnly engage, with their Lives and Fortunes to support them in the Measure," he was chosen upon the Committee to report Instructions to the Representatives,³ which were adopted in like manner; and again he appears on two similar Committees, 23 May, 1777,⁴ and 25 May, 1778;⁵ 10 May, 1779, he was of the Committee to consider "the Article in the Warrant relative to a new Constitution or Form of Government"⁶ which reported in favor of a State Convention, under certain restrictions. 3 May, 1780, "The Address of the Convention" and "a Constitution or Form of Government, agreed upon by the Delegates of the People of this State in Convention begun and held at Cambridge on the first of September, 1779," was submitted and, at the adjournment on the following day, taken up "Paragraph by Paragraph." The importance of the

was intersected by the laying out of Haymarket Place, in 1806. The front portion of the estate is now numbered 507 to 611 Washington Street; and the Tremont Theatre occupies a part of the rear of the lot.

The hostelry was called the White Horse Inn as early as 27 April, 1700 (Deed from William Paine *et al.* to Thomas Powell in Suffolk Deeds, xix. 347.) William Bowdoin conveyed the estate to Joseph Morton 20 March, 1765 (*Ibid.* civ. 89); and Morton conveyed it to his son Peter 3 May, 1791 (*Ibid.* chxix. 294.)

¹ Province Laws, v. 508, 512, 516, 517, 562, 709, 710.

² Boston Record Commissioners' Reports, xviii. 233, 270; xxvi. 4.

³ *Ibid.* xviii. 233. The Instructions are given in full on pp. 233-235.

⁴ *Ibid.* xviii. 233-234.

⁵ *Ibid.* xxvi. 23-24.

⁶ *Ibid.* xxvi. 62.

occasion is recognized in the vote relating to the adjourned meeting, recommending—

"that all Business be suspended by the Shutting up of Stores, Shops &c that there may be a full Attendance; . . . that the Ministers of the Gospel be requested to remind their respective Congregations the next Lords day, of this Adjournment, and of the importance of universally withdrawing themselves for a few hours from their ordinary Engagements, and devoting their Attention to a Matter so deeply interesting to themselves and their Posterity; [and] that a Copy of this Vote be sent to the Ministers of every Denomination."

The Third Article in the Bill of Rights was "taken up at large" at the adjournment on the ninth of May, and seems to have given especial trouble, and on the same day "the further consideration of this whole Article" was referred to a Committee (of which Morton was one) which reported the next day¹ when Morton was appointed Chairman of another Committee "to draw up the reasons for the proposed Alterations in some Articles of the Frame of a Constitution presented by the Convention," which made an elaborate Report. This Committee was also "to draught Instructions to our Delegates in the said Convention."² On the fourth of December, 1782, he was appointed on a Committee —

"to draw up a Memorial to the General Court, in order to State the Reasons why the Law intituled an Act for the more effectual Observation of the Lords Day, Militates with the Constitution."³

Three weeks later (27 December) their elaborate Report was made, and he was one of the Committee to present it to the General Court.⁴

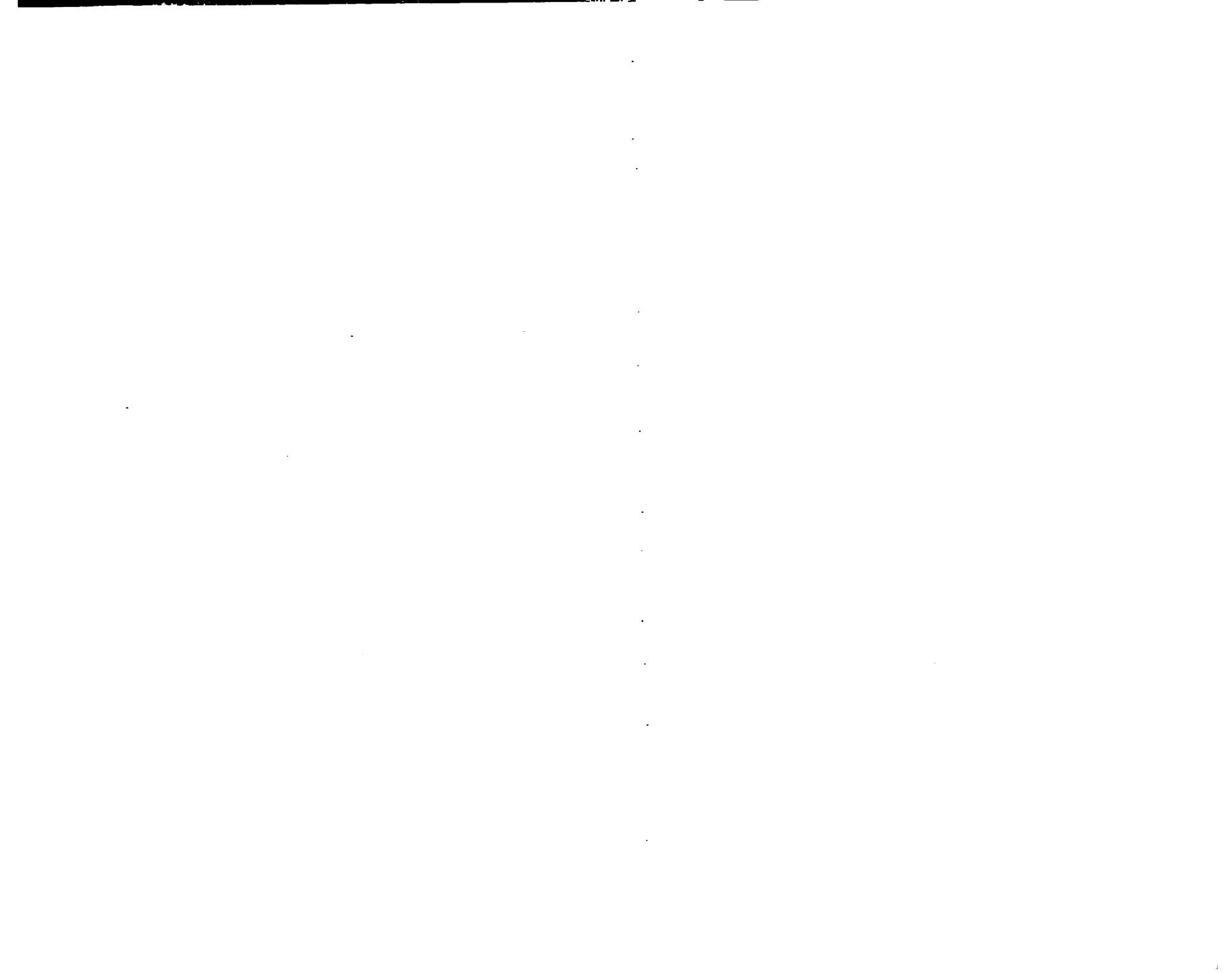
These various Reports, with the action of the Town upon them, bring out the excited condition of affairs and the prevailing sentiments and views of the people at the time, as nothing else can. Beside their direct bearing upon the points in question, all the various records of the town proceedings — both the earlier and the later — are interesting and full of suggestion, as showing the attitude of the Town in its relation to the Province or the

¹ Boston Record Commissioners' Reports, xxvi. 125-130.

² *Ibid.* xxvi. 131-135.

³ *Ibid.* xxvi. 277.

⁴ *Ibid.* xxvi. 280-285.



State, and to the Country at large. There is a shade of independence of either,—of self-centred authority,—an implied assertion of co-ordinate powers in everthing pertaining to the Town not inferior to any possibly possessed by any outside body whatsoever,—the very essence of local self-government uncontrolled and unlimited, and of municipal freedom.

The prominence of Morton during this whole period, and the confidence shown in his ability, are quite remarkable in the case of so young a man. At the Town Meeting on the fifth of March, 1783, "The Town did not proceed as usual to the choice of a Committee to provide an Orator" for the next year, a "Motion¹ having been made by the Town Clerk," William Cooper, looking to a change in the Anniversary. On the tenth of March this motion came up for consideration, "agreeable to the Article in Warrant," and Morton took part in the proceedings. A Motion, premising that —

"since the Institution of this Anniversary . . . which has Answered excellent purposes, a Signal Revolution has been effected through the Favour of Heavens in the Government of our Country by the establishment of the Independance of these United States of America,"

proposed a change in the Day, and suggested various topics for the future Orators, —

"the Steps that lead to this great Revolution, the distinguished Characters employed in effecting and maintaining it, the important & timely Aid [from France] . . . As also the superior Advantages of a Republican form of Government, well constituted and Administered . . . and the necessity of Virtue and good Manners & of an education that tends to promote them," etc.

The Motion "passed in the Affirmative," and a Committee was voted, of which Morton was Chairman, "to consider this Matter at large & Report at the Adjournment."² On the twenty-fifth of March the Committee reported as follows: —

"Whereas the Annual Celebration of the Boston Massacre on the 5th of March 1770, by the Institution of a Publick Oration has been found to be of eminent Advantage to the Causes of America in disseminating the

¹ Boston Record Commissioners' Reports, xxvi. 291. This Motion is also printed in Loring's Hundred Boston Orators (Second edition), p. 156.

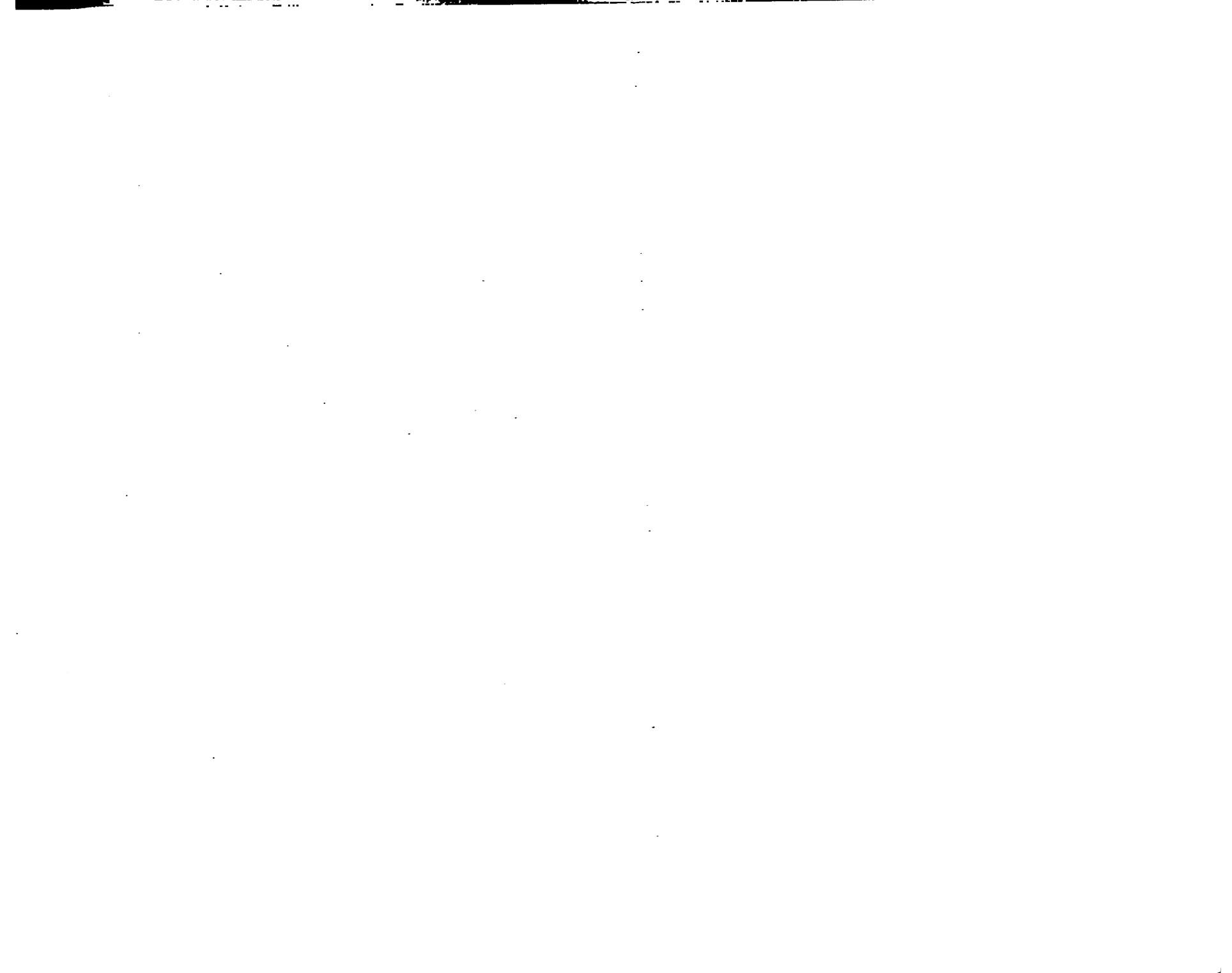
² Ibid. xxvi. 294, 295.

Principles of Virtue and Patriotism among her Citizens; And whereas the immediate Motives which induced the commemoration of that day, do now no longer exist in their primitive force; while the Benefits resulting from the Institution to [sic], may and ought to be forever preserved, by exchanging that Anniversary for Another, the foundation of which will last as long as time endures. It is therefore Resolved, that the Celebration of the fifth of March from henceforward shall cease; and that instead thereof the Anniversary of the 4th day of July A. D. 1776 (a Day ever memorable in the Annals of this Country for the declaration of our Independance) shall be constantly celebrated by the Delivery of a Publick Oration, in such place as the Town shall determine to be most convenient for the purpose. In which the Orator shall consider the feelings, manners & principles which led to this great National Event as well as the important and happy Errors whether general or domestick, which already have, and will forever continue to flow from this Auspicious Epoch."

This Report was accepted, and Morton was made Chairman of the Committee "to provide an Orator to deliver an Oration on the 4th of July Next Agreeable to said report."¹

Early in his public career, on an occasion which appealed with peculiar interest to the feelings and memories of Boston, a duty was assigned to Morton where it might well have seemed hard to satisfy an exacting expectation and demand, but where he met and equalled both. On Easter Monday, the eighth of April, 1776, he delivered the Oration when General Warren's body was removed from its hurried burial place on the field where he fell to the old Granary Burying Ground, so long associated with the history of the Town. The story of the impressive service in King's Chapel is well told in the History of that ancient church, and a quotation from a letter of Mrs. Abigail Adams to her husband, written two days after, brings vividly before us the Oration and the Orator. The letter of Dr. Andrew Eliot, also, written to Isaac Smith the next day, speaks of the "spirited Oration, wherein he [Morton] publickly urged an intire disconnection with Great Britain," — an

¹ Boston Record Commissioners' Reports, xxvi. 304, 305. Dr. John Warren, a younger brother of General Joseph Warren, was selected by the Committee to deliver the first Fourth of July Oration in Boston. It was delivered in the Church in Brattle Square. (*Ibid.* xxvi. 321-322.) See also Loring's Hundred Boston Orators (Second edition), pp. 156-167, for an account of the occasion, the oration, and the orator.



early enunciation of a sentiment already felt and soon to become universal.¹

Loring, after telling of the disinterment and burial, gives some account of the impressive solemnity in the Chapel, quotes from Mrs. Adams's letter, and adds quotations from the Oration, among them,— “Like Harrington he wrote, — like Cicero he spoke, — like Hampden he lived, — and like Wolfe he died!” He also gives a brief statement of some events in Morton’s life, and extracts from a poem on Bunker Hill by Mrs. Morton.²

Daniel Dulany Addison, in his Life and Times of Edward Bass (p. 152), speaks of the opening of King’s Chapel for this service, of

¹ Foote’s Annals of King’s Chapel, ii. 294, 318–320, 330. The Editor, Mr. Edes, also refers to Dr. John C. Warren’s Genealogy of Warren, p. 47; Frithingham’s Life and Times of Joseph Warren, pp. 517–526; Loring’s Hundred Boston Orators (Second edition), pp. 127–129; and Shurtleff’s Topographical and Historical Description of Boston (Third edition), pp. 226, 251, for further particulars; and, for the full text of the Oration, to the volume of Fifth of March Orations, printed by Peter Edes, 1785.

The obsequies in King’s Chapel, by leave of the House of Representatives, were in charge of the Masonic fraternity, of which Warren was Grand Master at the time of his death, and Morton a prominent member. The following is extracted from the Journals of the House, under date of 4 April, 1776:—

“In the House of Representatives — The committee appointed to take under consideration the Erecting a Monument to the Memory of the Honorable Major General Warren beg leave to report, that they have attended that service — and find that the place where his body was buried is discovered, and that the Lodge of Freemasons in this Colony, wherof he was late Grand Master, are desirous of taking up the said deceased remains, and in the Usual Solemnities of that Society to decently inter the same, and that his Friends are consenting thereto — Wherefore your committee are of opinion that the said Lodge have leave to put their said intentions into Execution in such manner as that the Government of this Colony may hereafter have an opportunity to Erect a Monument to the Memory of that Worthy Valiant & patriotic American. —

“JAMES SULLIVAN pr. Order.

“Read and accepted, and the said Lodge has leave to put their intentions as aforesaid, into Execution accordingly —

“In Council read and concurred

“Concurred to by 15 of the Council.”

The marginal note against this entry reads as follows:—

“Resolve giving Liberty to St. Andrew’s Lodge to move the body of Gen. Warren & inter him in Boston.”

I am indebted to Mr. C. B. Tiltingham for the text of this interesting extract from the House Journals.

² Hundred Boston Orators (Second edition), pp. 69, 127–130, 172, 278.

which he gives a brief account, referring to Morton’s “ingenious and spirited oration.” He mentions the closing of the Church thereupon till September, 1777, and its occupation from that time to 1783 by the Old South Congregation, while their Meeting-House was undergoing repairs in consequence of its use by the British Cavalry as a riding-school.¹

Morton was one of the Proprietors of King’s Chapel in 1785, when, and for several succeeding years, he held the pew — No. 4, in the broad aisle — which had been occupied, before the Revolution, by the notorious Charles Paxton, one of the Commissioners of Customs.² He was a Vestryman from 1783 to 1788, and perhaps longer.³ He also served, in 1785, upon the Committee which revised the old Liturgy and struck from it the doctrine of the Trinity.⁴ He seems, accordingly, to have had some share in the ecclesiastical, as well as in the public and legal affairs of the Town.

Morton’s active interest and concern in the stirring events of the Revolution and the times that led up to it, and the engrossing duties of so public a life,⁵ may have drawn him somewhat away from his profession for a time, but his later prominence as a lawyer and his part in the legal life of the Town are evidenced by the facts that he was the Attorney for Suffolk in 1779 and that he was made a Barrister⁶ in 1786; by The Record Book of the Suffolk Bar (1770–1805);⁷ and by the Records of the Courts.

After the Revolutionary War, Morton opened a law office in his own residence in State Street, which occupied the present site of the Union Safety Deposit Vaults, on the north-easterly corner of Exchange Street.

¹ See also Foote’s Annals of King’s Chapel (chapters xix. and xxi.), ii. 330–370, 378–406; and Hill’s History of the Old South Church (chapter v.), ii. 184–270.

² See Foote’s Annals of King’s Chapel, ii. 310, 311, 321, 324, 339, 363.

³ Ibid. ii. 608, and note. ⁴ Ibid. ii. 381 et seq.

⁵ On the twenty-eighth of April, 1779, with fifty-one others, he petitioned the General Court for authority to raise, by means of a Lottery, the funds needed by the Proprietors of Boston Pier, or Long Wharf, to put their property in repair. The authority was granted by Chap. 4 of the Acts of 1778–1780 (Provincie Laws, v. 1071, 1072, 1288, 1289.) He was also one of the Trustees of the Boston Theatre, erected in 1794 (Columbian Sentinel of 22 February, 1794, No. 1036, p. 3/3.)

⁶ He was one of the last two survivors of those who held this rank.

⁷ This volume is printed in 1 Proceedings of the Massachusetts Historical Society, for December, 1881, xix. p. 147 et seq.



On the twenty-fourth of February, 1781,¹ he married Sarah Apthorp, a daughter of James and Sarah (Wentworth) Apthorp, who was baptized at King's Chapel, Boston, 23 August, 1759. This lovely woman, whom Paine called the "American Sappho," was a prominent figure in the social life of Boston, and an authoress of repute. She was a granddaughter of Charles Apthorp, an eminent and opulent merchant of Boston; and her mother was of the Yorkshire family, of Wentworth Manor, to which belonged the Earl of Strafford.² Mrs. Morton was a frequent contributor to the "Seat of the Muses" in the Massachusetts Magazine,³ where may be read a long poetical correspondence which she held — under the signature of "Philenia" — with Thomas Paine.⁴ She also wrote several volumes in prose and verse. Kettell says that she "occupied the first rank among the female writers of America in the early part of her life," and that her verses, published in the Massachusetts Magazine, enjoyed a wide popularity.⁵ Mrs. Morton died at Quincy, Massachusetts, after a short illness, on the fourteenth of May, 1846.⁶ Her portrait was painted by Gilbert Stuart.⁷

¹ Trinity Church (Boston) Registers. The record says, "in Church." Loring's Hundred Boston Orators (Second edition, p. 129) and other works give the date of this marriage, erroneously, as 1778.

² Foote's Annals of King's Chapel, ii. 143. See also *Ibid.* ii. 281. Mrs. Morton's father, James Apthorp, married Sarah Wentworth, daughter of Samuel Wentworth (H. C. 1728), and grand-daughter of Lieutenant-Governor John Wentworth of Portsmouth, New Hampshire. (The Wentworth Genealogy (edition of 1878), i. 178, 316; 519-521, which also contains an extended account of the Apthorp family; and 522-524, where may be found a full account of Perez Morton's descendants.)

³ Duyckinck's Cyclopedias of American Literature, i. 633. Duyckinck (i. 483) also gives a sketch of Mrs. Morton, and a list of her principal works. Allibone's Dictionary of Authors (ii. 1877) and Josiah Granville Leach in his Morton Memoranda (p. 30) also enumerate her publications.

⁴ Not the author of Common Sense, but the Thomas Paine who changed his name to Robert Treat Paine (H. C. 1792).

⁵ Samuel Kettell's Specimens of American Poetry (Boston, mdcocxxix), ii. 75, contains a brief notice of Mrs. Morton and the text of her poem entitled The African Chief.

⁶ In the records of her baptism and marriage, her name appears as Sarah Apthorp. (King's Chapel Registers.) She subsequently added her mother's family name, and in the notice of her death she appears as "Madam Sarah Wentworth Morton, widow of the late Hon. Perez Morton, &c." (Boston Evening Transcript of 15 May, 1846.)

⁷ Leach's Morton Memoranda, p. 30.

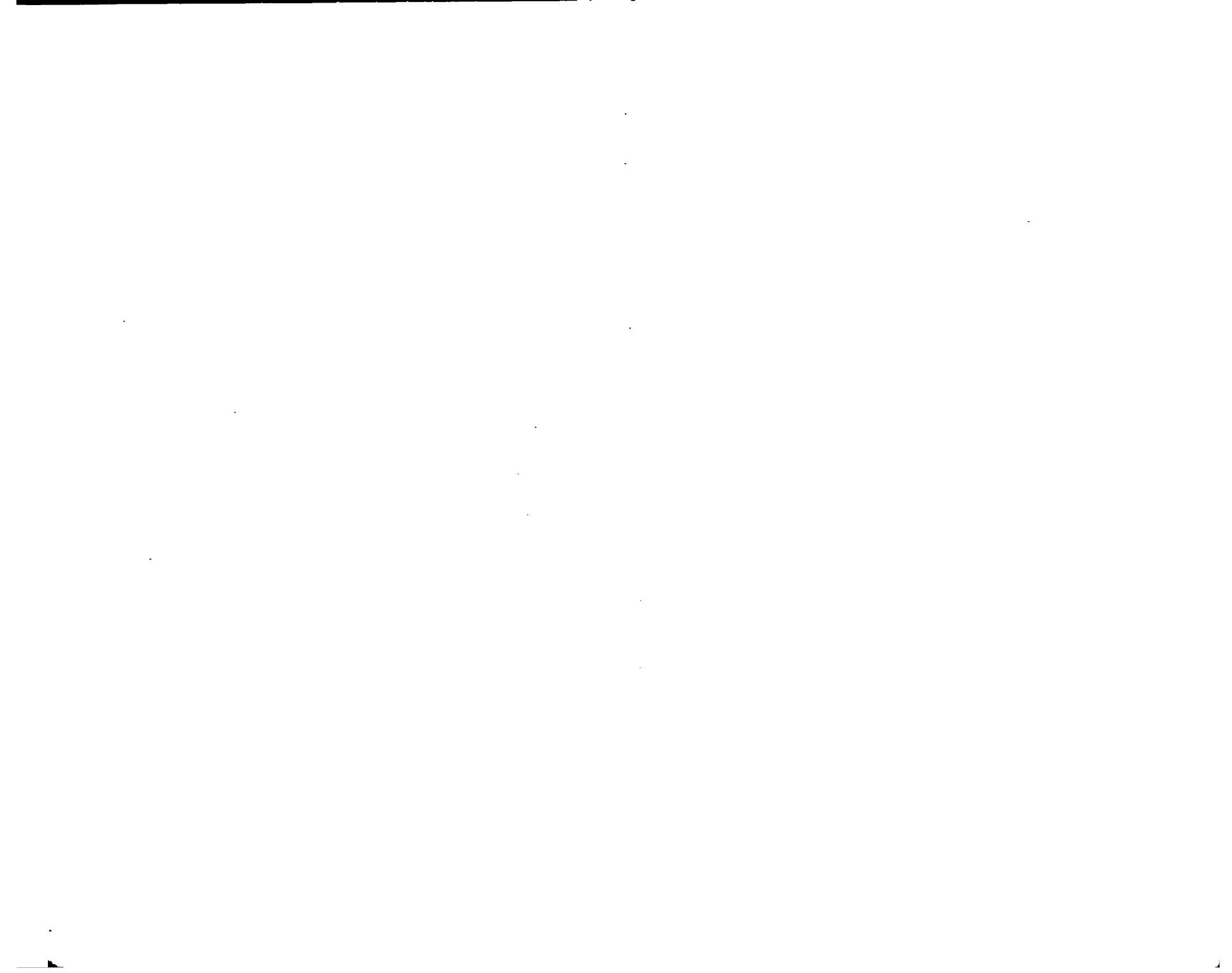
Morton was always prominent in public affairs from his graduation at Harvard till his death. In politics he was a Democrat, and the leading spirit in the old Jacobin Club which met at the Green Dragon Tavern.¹ He was Speaker of the House,² 1806-1808, 1810-1811, and Attorney-General of the Commonwealth, 1810-1832. In the latter capacity he was associated with Daniel Webster in the trial of the Knapps, at Salem, in 1830, for the murder of Captain Joseph White.

In 1811, the controversy over the land titles in certain parts of the District of Maine had assumed such proportions as to necessitate the interposition of the Legislature of the Commonwealth. Under an Order of the General Court of 27 February of that year, Governor Gerry appointed Perez Morton, Jonathan Smith, Jr., and Thomas B. Adams Commissioners to investigate thoroughly "the nature, causes, and state of the difficulties and grievances complained of" concerning the land titles in the County of Lincoln. The outcome of this investigation was the voluntary submission of all the conflicting claims to the determination of Commissioners — "three learned and able lawyers" — subsequently appointed by the Governor of Massachusetts, viz., Jeremiah Smith of Exeter, New Hampshire, the father of our honored associate of the same name, William H. Woodward, of Hanover, New Hampshire, and David Howell of Providence, Rhode Island. Morton, as Attorney General, also served on this Commission. The award of the Commissioners was made 26 January, 1818, and ended a long and hard-fought contest.³

¹ Loring's Hundred Boston Orators (Second edition), p. 130, where also may be read some satirical verses addressed to him by one of the political writers of that day.

² Morton sat in the House for Boston, in 1794, and for Dorchester from 1800 till 1811. His appointment as Attorney General was confirmed by the Council, 7 September, 1810; and he resigned his seat in the House, 23 January, 1811, when a new Speaker — Joseph Story — was chosen. (Council Records; and House Journals.)

³ Order of Both Branches of the Legislature of Massachusetts, to appoint Commissioners to investigate the causes of the difficulties in the County of Lincoln; and the Report of the Commissioners thereon, with the Documents in support thereof. Boston, 1811, 8vo. pp. 174; Governor Gerry's Message of 10 June, 1811, and Resolve No. xxxiv. passed 20 June, 1811 (Resolves of the General Court, 1811, pp. 218-241); and Award of the Commissioners, 26 January, 1818, and accompanying documents, and several Resolves passed 25 and



Morton was a delegate to the State Constitutional Convention of 1820, in which he took an active part, having been Chairman of the Committee of the Whole "on the reports of the select committee on the judiciary power," on the thirtieth of December. He sat in the Convention as a delegate from Dorchester,¹ where he died on Saturday, 14 October, 1837, at the age of 87.²

The following Obituary appeared in the columns of *The Atlas* (VI. 91) of Tuesday morning, 17 October, 1837:—

"In Dorchester, on Saturday evening, The Hon. Perez Morton, aged 87.

"Mr. Morton, until within the last few years, has been much before the Public. At the age of 21, he was chosen Secretary of the Convention at Watertown, and he afterwards served in the revolutionary army. He was for some time speaker of the Legislature in this State, and for twenty years, until the situation was abolished, discharged with ability and honor the office of Attorney General of Massachusetts.

"Excellent and amiable in private life, his memory will be embalmed and cherished in the circle of his immediate friends and connexions. Upright as a professional man — unwavering in his political views — unwearied and unswerving in the discharge of his official duties — he has left behind him a name which will long be remembered and respected.

"His last hours exhibited a beautiful instance of the power of religion in bestowing fortitude and resignation in the midst of much suffering and weakness. He departed in the blessed hope of a joyful resurrection through the atonement of the Savior, and his end was peace."

When we consider the ability of Morton as an orator, and his prominence alike in public affairs and in his profession, it is surprising that our historians and biographers who have spoken of him heretofore should have summed up the story of his life in a few lines, — and usually with great inaccuracy as to dates, —

²⁷ February, 1818 (*Ibid.* 1818, pp. 181-208.) Cf. Williamson's History of the State of Maine, II. 623-625.

¹ For an interesting account of the two houses occupied by Mr. Morton after his removal from Boston, see *The Old Morton and Taylor Estates in Dorchester, Massachusetts*, by David Clapp, Boston, 1892, reprinted from the New England Historical and Genealogical Register for 1892, xlvi. 78-94.

² *Boston Morning Post* (No. 118) of Wednesday, 18 October, 1837; and *The Westwork Genealogy* (edition of 1878), i. 521. The Dorchester Town Records erroneously give the date of Mr. Morton's death as 18 October, 1837.

affording to the general reader little or no conception of his character or career.

Captain SAMUEL TARBELL, JR., the Defendant, came of one of the old families of Groton. He was of the fifth generation from the Thomas Tarbell who, with his son, Thomas, was among the original proprietors, removing thither from Watertown, about 1663. His father, Captain Samuel Tarbell, Senior, was one of the ten children of Thomas Tarbell of the third generation, and a brother of the three children who find a place in history as having been carried into captivity by the Indians, 20 June, 1707, in one of those raids which so harassed the interior and frontier towns of Massachusetts in the early years of the eighteenth century, and from which Groton also suffered in King Philip's War.

The Defendant, one of nine children and the only son, was born 4 April, 1746. Very little is to be learned of him in the local histories. The fullest account of both him and his father is that given by Dr. Samuel A. Green, the highest authority on all matters connected with that ancient town, in his various historical works upon Groton.¹

The Bond, if given under the terms of the Act already referred to, as is presumably the case, would go to show that in 1777 he was regarded as "firmly attached to the American Cause," or as one who could be looked to for efficient assistance to it. There is nothing to explain his defection. He entered his Majesty's service as an officer, and died in his native place 4 March, 1796. It seems to have been hitherto assumed that Captain Samuel Tarbell, the elder, was the obligor in the Bond, and the one against whom the suit was brought. The inferences drawn from the material then at hand, and leading to this conclusion, are all clearly erroneous, and the death of Captain Samuel Tarbell, the elder, nearly two years before the date of the Bond, settles the matter beyond question.

The additional documents now to be presented, upon examination, at once raised a question as to the correctness of that assumption. One hesitated to differ from an authority so eminent and recog-

¹ *Groton Historical Series*, III. 108, 378; *Groton Church Records*, p. 25; *Groton Epitaphs*, pp. 285-286. See also *Butler's History of Groton*, pp. 440, 441.



nized as Dr. Green, or even to question his opinion upon any historical matter pertaining to Groton, but in the documents quoted by him there was internal evidence which seemed wholly at variance with his conclusion and raised a doubt. Dr. Green, in his account of Captain Samuel Tarbell, the older,¹ speaks of a Petition,² which he says "refers to the estate mentioned in Resolve CLIII."³ He also refers to Hill's History of Mason, N. H.,⁴—where the same error as to identity is made,— "for an allusion to him," and mentions "the decease of his son, Captain Samuel Tarbell . . . announced, under Deaths, at the end of this Number (page 114)," —an extract taken from the Columbian Centinel of 12 March, 1796,—

"At Groton, the 4th inst. Capt. Samuel Tarbell, late an officer in his Britannic Majesty's American Dragoons."

Dr. Green also reprints Resolve LXXXIX, — the one authorizing this Suit, and which has been already given.⁵

Now, the Petition first mentioned is the Petition of Amos Lawrence of Groton to the General Court, 16 February, 1781, setting forth —

"that Capt Samuel Tarbell late of said Groton Deceased died seized of a Farm containing about one hundred acres of Land, that after his Death the same was divided into nine Shares two whereof has been set off to his Son Samuel Tarbell now a Refugee in New York, that the same two shares have been since taken in execution for a Debt Due to the Government, and your Petitioner having purchased the other Shares, it hath become necessary in order to his making a proper improvement of the same that he should have the two Shares aforesaid, Wherefore he Humbly prays Your Honours . . . to suffer him to purchase the same . . .";

to which is appended a Certificate of the sale of the other shares, for £60 a share, to Lawrence by Henry Farwell and Samuel Reed.

¹ Groton Historical Series, iii. 100.

² The Petition is printed *Ibid.* ii. 491.

³ This Resolve is reprinted *Ibid.* iii. 110.

⁴ In the List of Settlers to 1790, we find, under date of 1740, —

"Tarbell, Capt. Samuel . . . Tory. His Estate was confiscated. He left town, and died in poverty and wretchedness, at Groton, his native place" (p. 220).

⁵ See ante, pp. 278, 299 and note.

two sons-in-law of the elder Samuel Tarbell.¹ Then follows the Resolve of the Legislature of 8 March, 1781, —

"that the Committee who are appointed to sell Confiscated Estates in the County of Middlesex . . . are . . . impowered to Sell at publick or private sale . . . the above mentioned Two ninths of the Farm which the above said Cap^t Samuel Tarbell Deceased, died seized of, & was set of [sic] to his son Samuel Tarbell & make & Execute a good & legal deed or deeds of the same . . ." — (Massachusetts Archives, cxxxii. 451.)

It was evident, on the face of the Petition, that this Farm of one hundred acres was not the four pieces amounting to seventy-six acres "attacht" on the writ in this Suit. The land "attacht" had been taken upon the execution. It had become the property of the Government, and the title had passed out of the original owner, whoever he was. It could not have descended to his heirs and become the subject of a partition among them. Moreover, it appeared by the Petition itself that seven ninths had been already sold by the heirs, without question by the Government, and that the "two ninths" in question, falling by inheritance to the son, "a refugee," was regarded as the property of the Government by confiscation, and that an application for its sale, under the usual order of procedure, was necessary in order to obtain possession of it. The father's interest in any lands had been undisturbed; the son's title to any had been confiscated to the Government. Resolve CLIII., dated 10 April, 1780, refers to "a judgment of Court against Samuel Tarbell, then of Groton (since fled to the enemy)," and, besides, sets out distinctly that the State had "levied execution" on the lands therein referred to, that they had "become the property of this State, and no person authorized to take care of the same," and therefore provides for leasing them "for one year"; all of which would be inconsistent with the Petition.

A further difficulty presented itself in the fact that the father would have been eighty years old at the time the Bond was given, in 1777, and a person not likely to be selected for the arduous duties required by the Bond, or one who might reasonably be expected to prove an efficient agent under the provisions of the Statute. All these facts raised a doubt as to the identity of

¹ The original Petition is in the Massachusetts Archives, cxxxii. 452.



"Capt. Samuel Tarbell." That doubt was increased by the original papers since found and included in this communication,—papers the existence of which was probably unknown when that account was published. As the Sheriff's Return upon the Writ has it: "all the afores^d peices of land was Claimed by the within named Samuel's late father Tarbell dec^d & now reputed to be the within Named Samⁿ estate." The elder Samuel's father died in 1715, and after the lapse of sixty years such a description seemed somewhat unusual. There was no question that the father "Tarbell was dead in the early part of 1781;" but how was it on 4 December, 1777, when the Bond was given? The Probate Records of the County of Middlesex make the whole case clear, and prove, conclusively, that the Defendant in this case was not Captain Samuel Tarbell the father, but Captain Samuel Tarbell, the son, who was born in 1746, and whose death was chronicled in 1796. The original papers on file in the Probate Office at Cambridge show the appointment of an administrator on the "Estate of Capt. Samuel Tarbell" on 15 July, 1776,—fixing the date of his death a year and a half, at least, before the date of the Bond in suit.

The name of Lydia Tarbell, widow, and the names in the list of heirs,—Edes, Moors, Phelps, Boynton, Reed, etc.,—together with that of the administrator, Isaac Farnsworth,¹ make the identity of the intestate unquestionable.²

¹ He, probably, was that Isaac Farnsworth who was a nephew of the widow, —a representative man in Groton, and, later, its Representative in the General Court.

² PEDIGREE OF CAPTAIN SAMUEL TARBELL, JUNIOR.

1. THOMAS TARBELL, the progenitor, settled in Groton in 1663; removed, after the destruction of Groton during Philip's War, to Charlestown and there died, of small pox, 11 June, 1678.
2. THOMAS TARBELL, married, 30 June, 1686, Hannah Longley; removed, with his father and family, to Charlestown where he died, of small pox, 26 April, 1678.
3. THOMAS TARBELL, born 16 July, 1687; married, 1 December, 1694, Elizabeth Woods, daughter of Samuel Woods of Cambridge and Groton; died in Lexington, 8 October, 1715 (grave stone.)
4. Captain SAMUEL TARBELL, Senior, born 14 October, 1697; married, 29 December, 1726, Lydia Farnsworth; died in Groton, 29 May, 1776. They had issue (1727-1753):—(i) Lydia, married Henry Farwell; (ii) Anna, married (1) Moses Haskell, (2) Peter Edes;

The Loyalists whose names appear in the papers herein described, are a few of those obscure men who, alike with their more famous brethren in the times of trial which transformed a Province into a State, bore the obnoxious name of Tory. Saving an exception or two, they seem to have been of these—severely judged then and not always leniently regarded to-day—who, with little prospect of preferment and in the face of obloquy, held with the sturdiness of English blood and New England breeding to their idea of duty, and aided with the Cause which they believed to be right.¹

The Rev. EDWARD G. PORTER then said:—

MR. PRESIDENT: The mention of Hopestill Capen's name brings me again to my feet. I have generally thought of him less as a Tory than as a great dry-goods dealer on Union Street both before and after the Revolution. Of course he came from Dorchester, where other Hopestills preceded him. The portrait of Count Rumford which hangs here before us reminds me that when that distinguished *savant* was plain Ben Thompson of Woburn, he was apprenticed to Mr. Capen; and so, I have been told, was Samuel Parkman, the eminent merchant.

The Capen store—or shop, as it was called in his day—is still standing on the corner of Union and Marshall Streets. For the last two generations it has been known as Atwood's Oyster House. In its prime, it was considered the most fashionable shopping place

(iii) Sybil, married Jonathan Moors; (iv) Deborah, married George Pierce; (v) Martha, married Edward Phelps; (vi) Sarah, married Lieutenant Joseph Boynton; (vii) Mary, married Samuel Reed, Junior; (ix) Eunice; besides (viii),

5. Captain SAMUEL TARBELL, JUNIOR, the obligor in the Bond, born 4 April, 1746; died in Groton 4 March, 1796.

For the materials for this Pedigree I am indebted to our associate Mr. Henry E. Woods, who is allied by blood to the Tarbells and several related families. See Butler's History of Groton, *passim*; and Laurence Hammond's Diary, printed in 2 Proceedings of the Massachusetts Historical Society for January, 1802, vii. 170, and note. Cf. Wyman's Genealogies and Estates of Charlestown, ii. 932.

¹ See Josiah Phillips Quincy's Remarks concerning the Loyalists, when communicating a fragment of the Diary of Samuel Quincy, in 1 Proceedings of the Massachusetts Historical Society for January, 1802, xix. 211-214.

for ladies in Boston. The finest goods could be had here, and the fair purchasers came in chariots, chaises, and on horseback from all the country round.

Our noted shop-keeper was one of the Artillery Company, and I think he held several minor offices in the Town Government.¹ He was buried at Copp's Hill.² It is worth mentioning that in the attic of Capen's building Isaiah Thomas started the Massachusetts Spy, a few years before the Revolution. Foreseeing the disturbances of '75, he shrewdly removed his newspaper, with all its belongings, to Worcester, where it has since been published as the Worcester Spy.

Mr. JAMES BRADSTREET GREENOUGH of Cambridge was elected a Resident Member; the Hon. JOSEPH WILLIAMSON, Litt.D., of Belfast, Maine, the Hon. SIMEON EBEN BALDWIN, LL.D., of New Haven, Connecticut, and Messrs. JOHN FRANKLIN JAMESON, Ph.D., of Brown University, and EDWARD SINGLETON HOLDEN, LL.D., of Washington, D. C., were elected Corresponding Members; and SIMON NEWCOMB, F.R.S., of Washington, D. C., was elected an Honorary Member.

¹ See Record Commissioners' Reports, xvi. 106, 223; and xviii. 11.

² In the Copp's Hill Burial Ground are headstones and footstones to the memory of Mr. Capen, to that of his wife, Patience Capen, who died 19 January, 1791, aged 87 years, and to that of their second son, John Capen, who died 19 February, 1770, at the age of seven years.

Capen's wife was Patience Stoddard, to whom he was married 12 June, 1760 (Boston Town Records). She was born in Boston, 24 February, 1733-34, — the daughter of Thomas and Tabitha (Hodgdon) Stoddard (Boston Record Commissioners' Reports, xxiv. 218; xxviii. 115).

Of the five or more children of Hopetill and Patience (Stoddard) Capen, the births of four are found on the Boston Town Records. (*Bid.* xxiv. 218, 221, 223, 225.) See ante, p. 271 and note 6.

APRIL MEETING, 1898.

A STATED MEETING of the Society was held in the Hall of the American Academy of Arts and Sciences on Wednesday, 20 April, 1898, at three o'clock in the afternoon, President WHEELWRIGHT in the Chair.

The PRESIDENT appointed the following Committees, in anticipation of the Annual Meeting:—

To nominate candidates for the several offices,—the Hon. JOHN E. SANFORD, and Messrs. SAMUEL JOHNSON and S. LOTHROP THORNDIKE.

To examine the Treasurer's Accounts,—Messrs. MOSES WILLIAMS and GEORGE WIGGLESWORTH.

The CORRESPONDING SECRETARY reported that since the last Stated Meeting he had received letters from SIMON NEWCOMB, F. R. S., accepting Honorary Membership, and from the Hon. JOSEPH WILLIAMSON, Litt.D., the Hon. SIMEON EBEN BALDWIN, LL.D., JOHN FRANKLIN JAMESON, Ph. D., and EDWARD SINGLETON HOLDEN, LL.D., accepting Corresponding Membership.

Professor NEWCOMB's letter is as follows:—

WASHINGTON, D. C., MARCH 22, 1898.

TO THE CORRESPONDING SECRETARY,
THE COLONIAL SOCIETY OF MASSACHUSETTS.

DEAR SIR,—I have much pleasure in acknowledging receipt of your communication of the 16th inst. apprising me of my election as Honorary Member of your Society. I highly appreciate so distinguishing an honour from so eminent a Society; and I beg that you will convey to the Society my thanks, coupled with the assurance that the honour it has done me is very gratifying to me and my family.

Yours most respectfully,
Simon Newcomb.



Mr. ANDREW MCFARLAND DAVIS offered the following vote, which was unanimously adopted:—

Voted, That the Amendments to the By-Laws proposed by the Council at this meeting are hereby adopted, so that Article 5 of Chapter II., Article 3 of Chapter III., Article 2 of Chapter V., Article 3 of Chapter VI., Article 1 of Chapter VII., Articles 1, 3, and 4 of Chapter VIII., Article 2 of Chapter IX., Articles 1 and 2 of Chapter X., and Article 5 of Chapter XI., will read as follows:—

[Instead of noting here, in detail, the many slight changes made by the foregoing Vote, the whole Code, as amended, is printed below.]

CHAPTER I.

THE CORPORATE SEAL.

ART. 1.—The Corporate Seal shall be: On an Escutcheon the arms of the COLONY OF THE MASSACHUSETTS BAY impaling the COLONY OF PLYMOUTH; above the dexter 1630 and the sinister 1620; surrounded by a circle bearing, THE COLONIAL SOCIETY OF MASSACHUSETTS, 1692, 1892.



ART. 2.—The Recording Secretary shall have the custody of the Seal.

CHAPTER II.

MEMBERS AND DUES.

ART. 1.—The number of Resident Members of the Society never shall exceed One Hundred. They shall be elected from among the citizens of Massachusetts, and shall cease to be mem-

bers whenever they cease to be residents thereof. The number of Corresponding Members never shall exceed Fifty; and the number of Honorary Members never shall exceed Twenty. They shall be elected from among non-residents of Massachusetts, and shall cease to be members if at any time they become both citizens and permanent residents thereof.

No person shall be eligible to membership who cannot prove, by documentary evidence satisfactory to the Council, his lineal descent from an ancestor who was a resident of the Colonies of Plymouth or the Massachusetts Bay.

Resident Members only shall be eligible to office or be entitled to vote or to take part in the business of the Society.

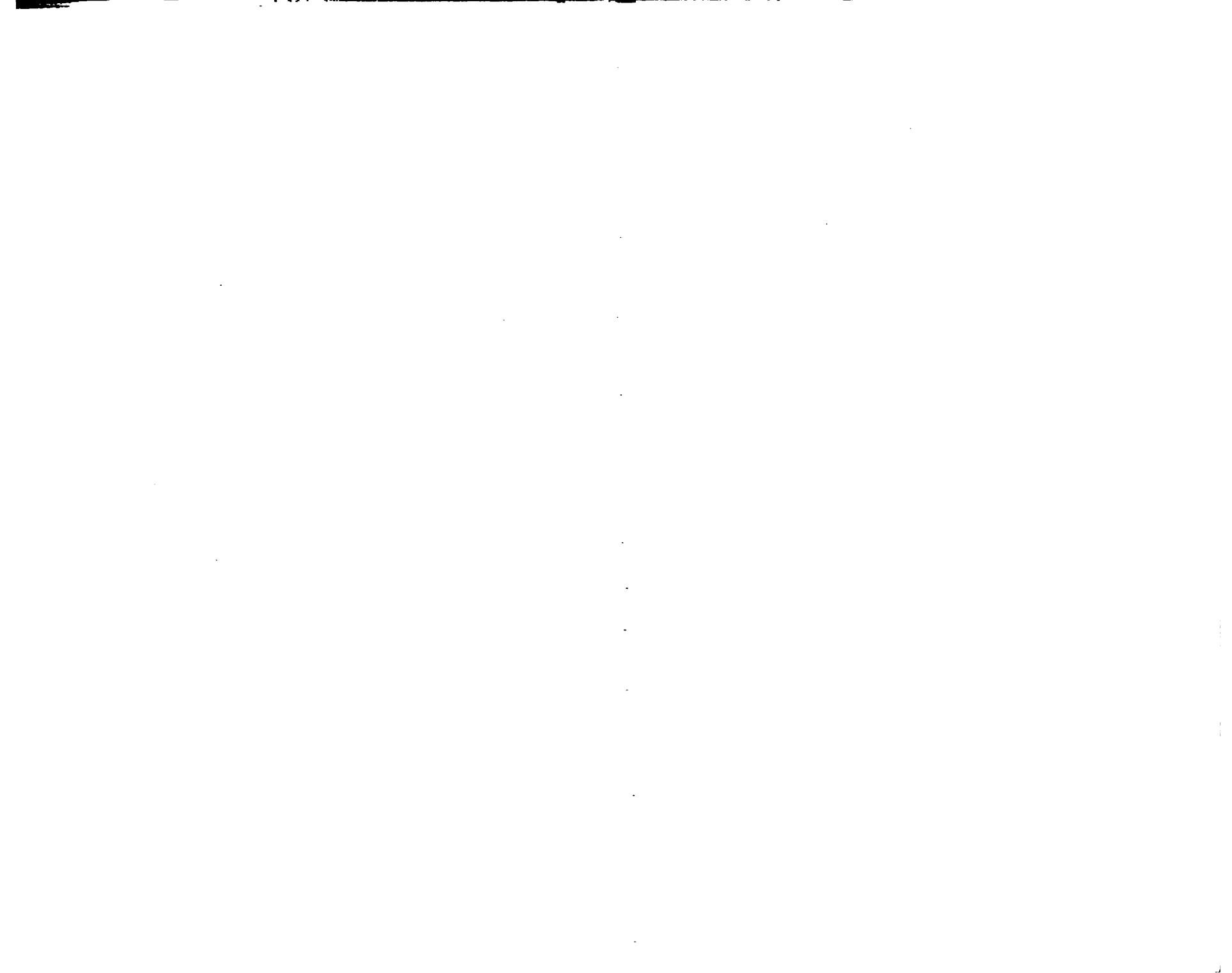
ART. 2.—A book shall be kept by the Recording Secretary, in which any member may enter the name of any person whom he may regard as suitable to be nominated as a Resident, Corresponding, or Honorary Member,—it being understood that each member is bound in honor not to make known abroad the name of any person proposed or nominated; but no nomination shall be made except by a report of the Council at a Stated Meeting of the Society. No nomination shall be acted upon at the same meeting to which it is reported; nor shall more than one candidate for Honorary Membership be reported at any meeting.

ART. 3.—Proposals of candidates and nominations shall be accompanied by a brief statement of the place of residence and qualifications of the person proposed or nominated.

ART. 4.—All members shall be elected by ballot at a Stated Meeting, the affirmative votes of three-fourths of all the members present being requisite to an election.

ART. 5.—Each Resident Member shall pay Ten Dollars at the time of his admission, and Ten Dollars each Twenty-first of November afterward, into the treasury for the general purposes of the Society; but any member shall be exempt from the annual payment if, at any time after his admission, he shall pay into the treasury One Hundred Dollars in addition to his previous payments; and all Commutations shall be and remain permanently funded, the interest only to be used for current expenses.

ART. 6.—If any person elected a Resident Member shall neglect, for one month after being notified of his election, to accept his membership in writing and to pay his Admission Fee, his



election shall be void; and if any Resident Member shall neglect to pay his Annual Assessment for six months after it shall have become due, and his attention shall have been called to this article of the By-Laws, he shall cease to be a member; but it shall be competent for the Council to suspend the provisions of this Article for a reasonable time.

ART. 7.—Diplomas signed by the President and countersigned by the two Secretaries shall be issued to all the members.

ART. 8.—Any member may be expelled for cause, at any Stated Meeting of the Society, upon the unanimous recommendation of the members of the Council present at any meeting thereof.

CHAPTER III.

MEETINGS, QUORUM, AND AMENDMENTS.

ART. 1.—There shall be Stated Meetings of the Society on the Twenty-first day of November, and on the third Wednesdays of December, January, February, March, and April, at such time and place as the Council shall appoint; provided, however, that the Council shall have authority to postpone any, except the November, Stated Meeting, or to dispense with it altogether whenever, for any cause, they may deem it desirable or expedient. Special Meetings shall be called by either of the Secretaries at the request of the President; or, in case of his death, absence, or inability, of one of the Vice-Presidents, or of the Council.

The Stated Meeting in November shall be the Annual Meeting of the Corporation.

ART. 2.—Upon the request of the presiding officer, any motion or resolution, offered at any meeting, shall be submitted in writing.

ART. 3.—Ten members shall constitute a quorum for all purposes except for amendment of the By-Laws, which shall be made only on recommendation of the Council at a Stated Meeting (in the notification of which mention has been made of a purpose to amend the By-Laws) at which not less than Twenty members are present, by an affirmative vote of three-fourths of all the members present at the meeting.

CHAPTER IV.

OFFICERS.

ART. 1.—The officers of the Society shall be a President, who shall be Chairman of the Council; two Vice-Presidents; a Recording Secretary, who shall be Secretary of the Council; a Corresponding Secretary; a Treasurer; and a Registrar,—all of whom shall be chosen by ballot at the Annual Meeting, and shall hold their respective offices for one year, or until others are duly chosen and installed. At the first meeting three members shall be elected, who, with the officers previously named, shall constitute the Council of the Society. One of the said three members shall be elected to serve for the first year, one for two years, and one for three years; and thereafter one member shall be elected annually for the term of three years.

Each member of the Council shall have a vote.

ART. 2.—Elections to fill vacancies which may occur in the Council shall be for the unexpired term or terms; and such vacancies may be filled by it at its discretion.

ART. 3.—At the Stated Meeting in April, a Nominating Committee, consisting of three persons, shall be appointed by the presiding officer, and shall report to the Annual Meeting a list of members for the places to be filled.

ART. 4.—No officer of the Society shall receive any pecuniary compensation for his services.

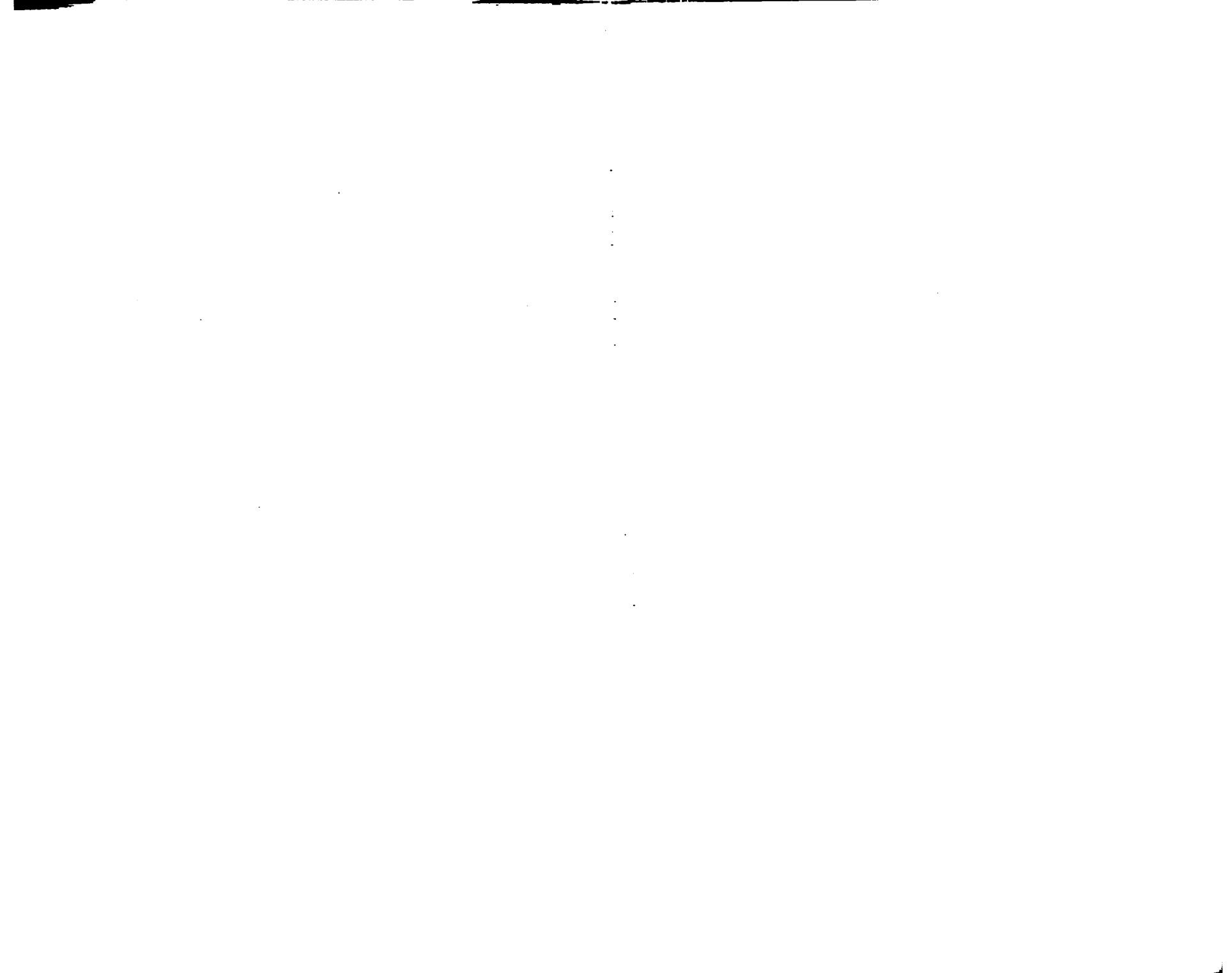
CHAPTER V.

THE PRESIDENT.

ART. 1.—The President shall be the chief executive officer of the Society; and, with the advice of the Council, shall superintend and conduct its prudential affairs.

ART. 2.—The President, and in his absence one of the Vice-Presidents, shall preside in all meetings of the Society. In the absence of all these officers, a President *pro tempore* shall be chosen.

ART. 3.—Unless otherwise ordered, all Committees shall be appointed by the presiding officer.



CHAPTER VI.

THE RECORDING SECRETARY.

ART. 1.—The Recording Secretary, or in case of his death, absence, or inability, the Corresponding Secretary, shall warn all meetings of the Society and of the Council, in such manner as the Council shall direct.

ART. 2.—In the absence of the President and of the Vice-Presidents, he shall, if present, call the meeting to order, and preside until a President *pro tempore* is chosen.

ART. 3.—He shall attend all meetings of the Society and of the Council, and shall keep an exact record of the same, with the names of the members present,—entering in full all accepted Reports of committees unless otherwise specially directed, or unless the same are to be included in the printed Transactions.

ART. 4.—He shall enter the names of all members systematically in books kept for the purpose.

ART. 5.—All books and papers in his official custody shall be the property of the Society.

CHAPTER VII.

THE CORRESPONDING SECRETARY.

ART. 1.—The Corresponding Secretary shall notify all persons who may be elected members; send to each a copy of the By-Laws, calling attention to Articles 5 and 6 of Chapter II.; and on their acceptance issue the proper diploma.

ART. 2.—He shall conduct the correspondence of the Society not otherwise provided for, and keep all original letters received and copies of all letters sent in regular files, which shall be the property of the Society.

ART. 3.—At every Stated Meeting he shall read such official communications as he may have received since the last Stated Meeting.

CHAPTER VIII.

THE TREASURER.

ART. 1.—The Treasurer shall collect all money due to the Society, and shall keep, in books belonging to it, regular and faithful accounts of all the receipts, expenditures, and Funds, which accounts shall be open always to the inspection of the Council.

At the Annual Meeting he shall make a written or printed Report of all his official doings for the year preceding, of the amount and condition of all the property of the Society intrusted to him, and of the character of the investments.

ART. 2.—He shall invest and manage the Funds of the Society with the consent and approval of the Council.

ART. 3.—He shall pay no money except on draft of the Council, or of its duly authorized committee.

ART. 4.—He shall give bonds to the satisfaction of the Council for the faithful performance of the duties of his office.

[This Article was adopted to satisfy the requirements of Section 28 of Chapter 100 of the Public Statutes of the Commonwealth.]

CHAPTER IX.

APPROPRIATIONS, AND TREASURER'S ACCOUNTS.

ART. 1.—No person or committee shall incur any debt or liability in the name of the Society, unless in accordance with a previous vote and appropriation therefor by the Society or the Council.

ART. 2.—At the Stated Meeting in April, an Auditing Committee, consisting of two persons not members of the Council, shall be appointed by the presiding officer to examine the accounts of the Treasurer for the current year, and, at the Annual Meeting, to report thereon, and on the state of any property of the Society in his hands.

CHAPTER X.

THE REGISTRAR.

ART. 1. — The Registrar shall report to the Council upon the eligibility to membership of all candidates before their names are reported to the Society.

ART. 2. — He shall have the custody of all documents filed by members in proof of their eligibility.

CHAPTER XI.

THE COUNCIL.

ART. 1. — The Council shall determine its own quorum; establish rules and regulations for the transaction of its business, for the government of the Society, and for the admission of members; arrange for securing historical and other appropriate papers and communications; authorize all expenditures of money, drawing upon the Treasurer, from time to time, for such sums as may be required; provide all engraved or printed blanks and books of record; and see that the By-Laws are complied with.

ART. 2. — It shall appoint all necessary agents and subordinates (who shall hold their respective positions during the pleasure of the Council), prescribe their duties, and fix their compensation.

ART. 3. — It may appoint, for terms not exceeding one year, and prescribe the functions of, such committees of its number, or of the members of the Society, as it may deem expedient, to facilitate the administration of the Society's affairs.

ART. 4. — It shall report, at its discretion, nominations for Resident, Corresponding, and Honorary Members, and act upon all resignations and forfeitures of membership.

ART. 5. — After the death of a Resident Member it shall appoint a member of the Society to prepare a Memoir of the deceased.

ART. 6. — It shall report at every meeting of the Society such business as it may deem advisable to present. At the Annual Meeting it shall make an Annual Report which shall include a detailed statement of the doings of the Society during the preceding year.

President WHEELWRIGHT then said : —

Gentlemen of The Colonial Society of Massachusetts : —

It is my pleasing duty, as Chairman of the Committee appointed to consider the subject of increasing the Permanent Funds of the Society, to present the Report of that Committee, which is as follows : —

To the Members of The Colonial Society of Massachusetts : —

The Committee appointed at the Stated Meeting in February, 1897, to consider the subject of increasing the Permanent Funds of the Society has attended to that duty and beg leave to report that it secured subscriptions amounting to Ten Thousand Dollars to a Fund named, in honor of the late President of the Society, THE GOULD MEMORIAL FUND; that this amount was pledged by seventy-three persons, in sums ranging from \$5 to \$1,250; and that, with the exception of \$200, the money has been actually paid into the Society's treasury.

Respectfully submitted,

EDWARD WHEELWRIGHT,
SAMUEL JOHNSON,
D. R. WHITNEY,
CHARLES F. CHOATE,
ROBERT N. TOPPAN,
NATHL. C. NASH,
HENRY H. EDES,

} Committee.

BOSTON, 20 April, 1898.

The Report is short but satisfactory. The Gould Memorial Fund of Ten Thousand Dollars is fully subscribed and, virtually, paid in. We have thus erected a substantial and permanent monument in honor of our first President, and have also created a nucleus around which will gather in the not distant future, as I confidently believe, other Funds which will place our Society on the stable financial footing which it ought to have in order to fulfill the patriotic designs of its Founders.

The most immediately urgent need of such permanent Funds is to provide for the publication of our Transactions and Collections. The Society has taken a just pride in the only volume of its Publications which has yet appeared. Both for its subject-matter and for its typographical attractiveness it is entitled, by common consent, to take high rank among similar works in this country; but, as appears by the published Reports of the Treasurer for the years 1893 and 1894, it was only possible to attain this very satis-

factory result through the voluntary contributions, amounting in the aggregate to several hundred dollars, of a few public-spirited members. The income of the Gould Memorial Fund will, in great measure, do away with the necessity for such voluntary contributions in the future; but even with the addition of the income of the small General Fund and of the still smaller Publication Fund previously existing, it will fall far short of what is required for this purpose.

We really need two Publication Funds of Twenty-five Thousand Dollars each, one to defray the cost of printing our Transactions, the other for publishing our volumes of Collections, for which abundant material is already at hand, while more is constantly being discovered. If we had adequate means, several volumes might be in progress at the same time.

We have now in our several Funds the considerable sum of \$12,500, which it is fair to assume will, in the course of time, be augmented by gifts and bequests drawn to it by that law of natural attraction, "To him that hath shall be given."

It may be long before our comparatively young Society attains to the splendid financial position of our honored elder sister, the Massachusetts Historical Society. Her sixteen Permanent Funds now amount, according to the recently printed Report of the Treasurer, to more than \$150,000, exclusive of Real Estate which has recently been sold for \$200,000. We may not, perhaps, receive at once a single donation so munificent as that made to the Historical Society by the late George Peabody, and known as the Peabody Fund, — not the least admirable of the public benefactions of that eminent philanthropist and patriotic citizen, — but, as we have already, in our five years of existence, shown ourselves competent to do good and useful work, and have, moreover, exhibited a willingness and an ability to help ourselves, we may be permitted to hope that we shall eventually receive, either from within our own ranks or from those, not members, who sympathize with our aims and aspirations, such accessions to our permanent endowment as will enable us to provide, not only for the continuance and enlargement of our Publications, but also for those other urgent needs, — a Permanent Home for the Society, a Library, and a Cabinet.

In conclusion, let me quote the old Latin proverb —

"*Bis dat qui sibi dat.*"

On motion of Mr. G. ARTHUR HILTON, it was, unanimously,

Voted, That the Report be accepted, and the Committee be discharged with the thanks of the Society for its labors in prosecuting to a successful issue the work of laying the foundation of a substantial endowment of the Corporation.

The following is a List of the Subscribers to the Fund: —

JAMES BARR AMES.	ALBERT MATTHEWS.
ROBERT TILLINGHAST BABSON.	THOMAS MINNE.
EDWARD APPLETON BANGS.	NATHANIEL CUSHING NASH.
WALTER CABOT BAYLIES.	JOHN NOBLE.
GEORGE NIXON BLACK.	NATHANIEL PAINE.
CHARLES PICKERING BOWDITCH.	MISS ELIZA WILLARD SHAW PARKMAN.
LOUIS CABOT.	WILLIAM TAGGARD PIPER.
FRANKLIN CARTER.	EDWARD GRIFFIN PORTER.
SETH CARLO CHANDLER.	HENRY PARKER QUINCY.
CHARLES AUGUSTUS CHASE.	CHARLES SEDGWICK RACKEMANN.
CHARLES FRANCIS CHOATE.	RICHARD MIDDLECOTT SALTONSTALL.
ELIOT CHANNING CLARKE.	JOHN ELIOT SANFORD.
CHARLES WARREN CLIFFORD.	PHILIP HOWES SKARS.
ROBERT CODMAN.	HENRY DWIGHT SEDGWICK.
HENRY WINCHESTER CUNNINGHAM.	MRS. DANIEL DENISON SLADE.
ANDREW MC FARLAND DAVIS.	DENISON ROGERS SLADE.
HENRY HERBERT EDES.	JEREMIAH SMITH.
WILLIAM CROWNINSHIELD ENDICOTT.	CHARLES ARMSTRONG SNOW.
CHARLES CARROLL EVERETT.	JAMES BRADLEY THAYER.
FREDERICK LEWIS GAY.	JOHN ELIOT THAYER.
GEORGE LINCOLN GOODALE.	SAMUEL LOTHROP THORNDIKE.
ABNER CHENEY GOODELL, JR.	ROBERT NOXON TOPPAK.
WILLIAM WATSON GOODWIN.	GEORGE FOX TUCKER.
CHARLES MONTRAVILLE GREEN.	WILLIAM CUSHING WAIT.
MRS. GEORGE SILSBEE HALE.	WILLIAM WATSON.
GUSTAVUS ARTHUR HILTON.	CHARLES GODDARD WELD.
JOHN ELDRIDGE HUDSON.	MRS. WILLIAM GORDON WELD.
EDWARD FRANCIS JOHNSON.	SAMUEL WELLS.
SAMUEL JOHNSON.	ANDREW CUNNINGHAM WHEEL-
GEORGE LYMAN KITTREDGE.	WRIGHT.
WILLIAM COOLIDGE LANE.	EDMUND MARSH WHEELWRIGHT.
JOHN LATHEROP.	EDWARD WHEELWRIGHT.
WILLIAM LAWRENCE.	DAVID RICE WHITNEY.
WALDO LINCOLN.	HENRY WILLIAMS.
FRANCIS CABOT LOWELL.	MOSES WILLIAMS.
JOHN LOWELL.	ROGER WOLcott.
CHARLES FRANK MASON.	HENRY ERNEST WOODS.

The PRESIDENT announced the death of Dr. Allen as follows:—

Our associate the Rev. Dr. JOSEPH HENRY ALLEN died at his residence in Cambridge on the twentieth of March.

I had not the advantage of an intimate personal acquaintance with Dr. Allen,—in fact I only knew him as a member of this Society, to which he was elected on the twentieth of December, 1893. He was a frequent and interested attendant at our meetings, and on several occasions contributed valuable remarks to our discussions, while at the Stated Meeting in February, 1895, he spoke at length upon the Religious Situation in the American Colonies before the Revolution.¹ He also wrote for our Transactions a Memoir of William Gordon Weld.²

I shall leave it to others, who knew him better, to speak of Dr. Allen's many virtues and accomplishments, taking this occasion, however, to announce that the Rev. Professor Charles Carroll Everett has been appointed by the Council to write the Memoir of Dr. Allen for our Publications.

At the conclusion of the President's remarks Mr. ARCHIBALD M. HOWE said:—

Joseph Henry Allen was the son of the Rev. Dr. Joseph Allen, who was the minister of the First Parish in Northborough from 1816 until his death, in 1878. "His mother was a daughter of the elder Ware,—that Henry, whose appointment as Hollis Professor of Divinity in Harvard College, in 1805, . . . furnished the Andover Theological Seminary with its reason to exist . . . Through his mother, Dr. Allen was descended from a line of six Congregational ministers, among them a John Hancock and the famous Jonas Clark of Lexington."³

Mr. Allen graduated at Harvard in 1840, high in rank. After three years in the Divinity School, he began the work of his ministry at Jamaica Plain. Four years later, he became pastor of the Unitarian Church in Washington, and while there was put to a severe test both morally and intellectually. It was the period of

¹ Publications, III. 41-46.

² Ibid. III. 229-236.

³ Rev. John White Chadwick, in the New York Evening Post of Monday, 21 March, 1895.

the Mexican war, and it was no easy task for a man under thirty years of age to minister to such men as John Quincy Adams, John P. Hale, Levi Woodbury, Albion K. Parry, William Cranch, William G. Eliot, John Fairfield, and other political leaders of varied views; but it was Mr. Allen's nature to speak frankly and freely upon all occasions. On the twenty-seventh of February, 1848, he preached A Discourse,¹ occasioned by the death of John Quincy Adams² from the text—

"Mark the perfect man, and behold the upright: for the end of that man is peace."

In his exordium he said:—

"The season, always greeted with the glad and loyal welcome of every patriotic heart, as the commemoration of the birth of our country's greatest man, has been rendered doubly memorable now, by the announcement which has made the Nation's heart return in part from its fever-dream of war³ to the purer hope and glad anticipation of peace, and by the quiet and gentle departure from life of the most venerable and distinguished of our public men."

After three years of active work in Washington, Mr. Allen, in 1850, succeeded the Rev. Dr. Frederick H. Hedge as pastor of the Unitarian Church in Bangor, Maine. He was soon a leader in protesting against the Kansas-Nebraska Bill. The admonition which he received from a parishioner was followed by his strong Lectures against Slavery, and then—after the assault on Sumner—by the so-called "political preaching" which caused his departure from Bangor. His printed sermons had done much to create the Republican party in Maine, in 1856: and Hannibal Hamlin, a member of his parish, began his political career as a Republican at that time.

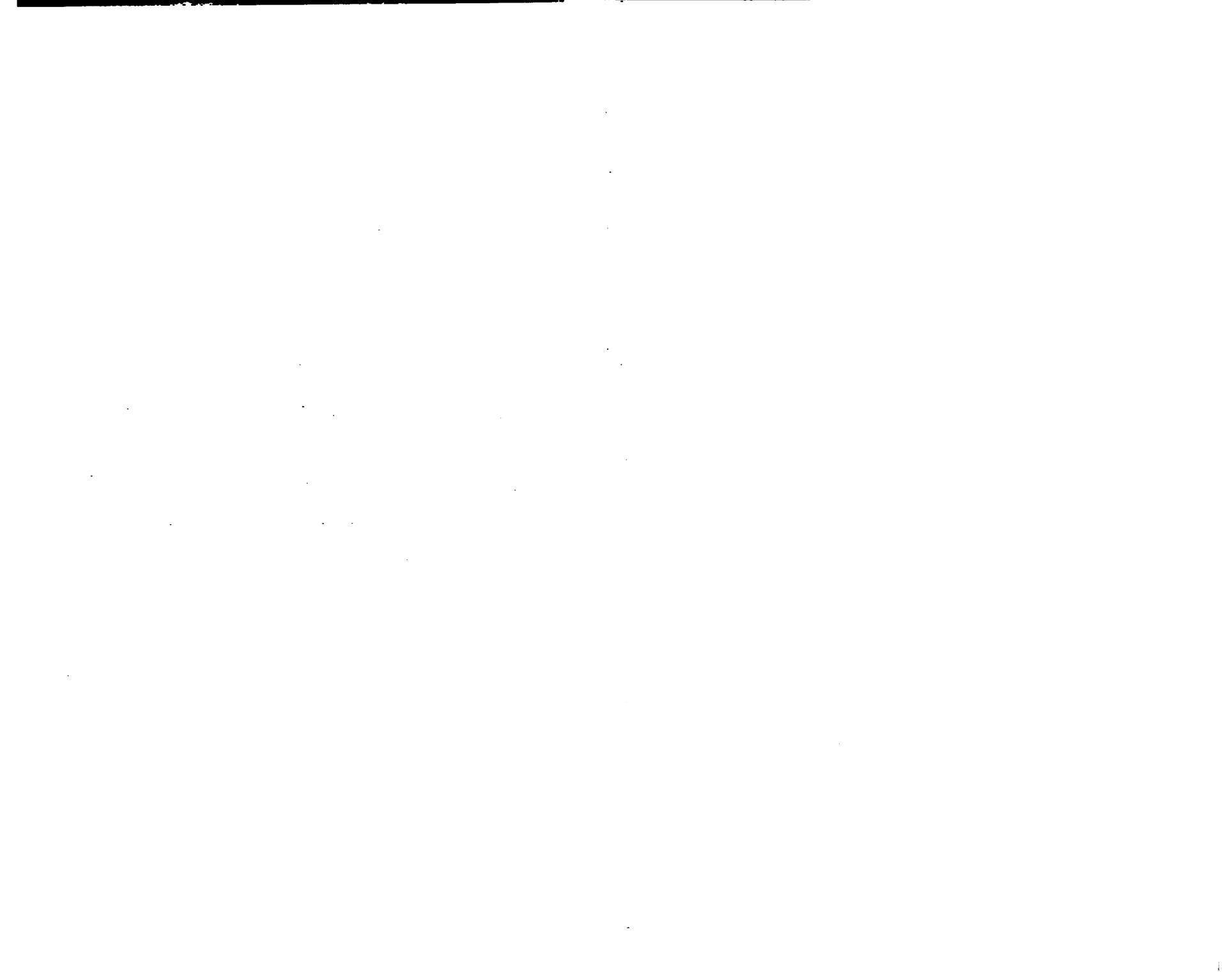
Then followed years of teaching, preaching, and editing The Christian Examiner and The Unitarian Review.

For several years Mr. Allen lived at Jamaica Plain; after 1867, and until his death, his place of residence was Cambridge, where

¹ The Statesman and the Man. A Discourse on occasion of the death of Hon. John Quincy Adams, delivered in Washington, Feb. 27, 1848, by Joseph Henry Allen, Pastor of the Unitarian Church. Washington, 1848, 8vo. pp. 28.

² Mr. Adams died 23 February, 1848.

³ The Mexican War, which Mr. Adams had always opposed, was ending.



he was engaged in private teaching, and in editing Allen and Greenough's series of Latin text-books. For four years (1878-1882) he was Lecturer on Ecclesiastical History in the Harvard Divinity School. In some intervals,—each of a year or more,—he nobly bore the burdens of struggling churches in Michigan, New York, and California, leaving home-life when far advanced in years, and giving not only personal service, but money, often not easily spared.

Mr. Allen never suffered himself to be misled by a desire for popularity. He knew "the ignominy of the popular preacher," and anything unreal or insincere in expression was utterly foreign to his nature. Sometimes he was obliged to assert himself when he thought the country needed his personal views upon controversial questions; but he took no part in discussions about the smaller matters of doctrine. Although a loyal Unitarian, his catholicity was most inspiring.

In 1881, Mr. Allen visited Hungary as the delegate of American and British Unitarians to the Consistory of Unitarian Churches in Transylvania. His intimate acquaintance with the country, his linguistic knowledge, and his ease in approaching all men made him a very valuable representative.

Harvard University tardily recognized Mr. Allen's character and scholarship by conferring upon him, in 1891, the honorary degree of Doctor of Divinity.

Dr. Allen was one of the last of our Massachusetts teachers of the old school. Of a vigorous and independent mind, he was habitually calm and self-possessed, teaching with a humility of spirit which compelled others to listen. His influence as an instructor of ministers was very great, but ministers were not his only pupils. He taught even more by example than by precept, and the most casual acquaintance could not fail to come under the influence of his gentle and noble nature. From his earliest boyhood he had served his fellow-men. I well remember his telling how his father's family was accustomed to receive the town paupers at Thanksgiving dinner, and how the children, on hearing that one of the guests, who had lost a forefinger, was a Roman Catholic, decided that all Roman Catholics must have only one forefinger.

Nothing was more delightful than Dr. Allen's conversation. His personal and literary acquaintance was large. He was in fre-

quent correspondence with Dr. Martineau, Francis William Newman, and many other illustrious scholars, while his genuine love of all men, his gentleness, and his deep experience made it possible for him to get something from men and women of every station.

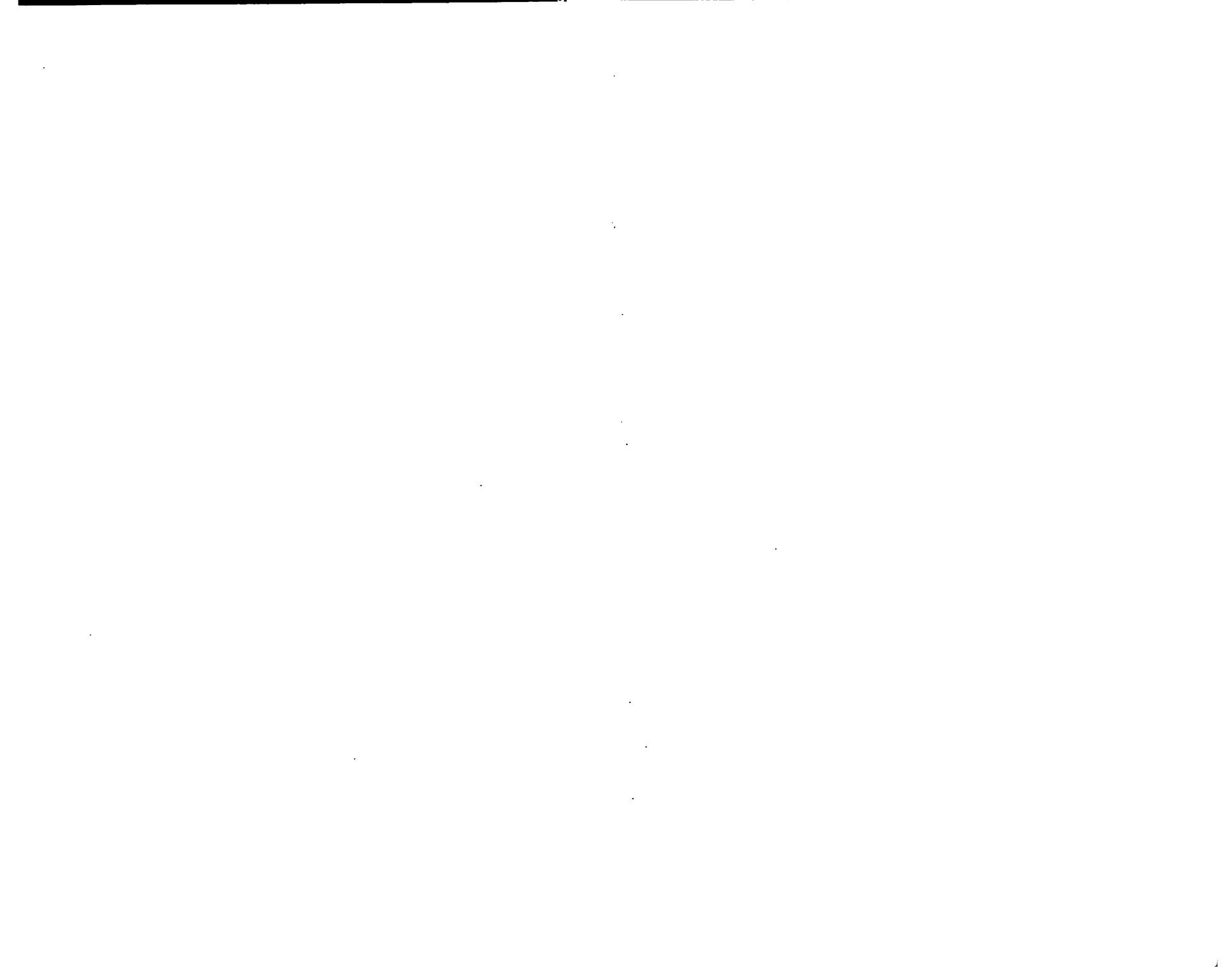
As a neighbor who had the privilege of witnessing the course of Dr. Allen's daily life, I wish I could adequately express its effect upon those around him. It made his household beautiful, and rendered his unceasing activity a power that cannot be measured by worldly standards. His was the life of the spirit, which, guided by a noble mind, made contentment sure for him, despite the many burdens that he carried for others and for himself. He exemplified the words of Martineau,—

"That a soul occupied with great ideas best performs small duties; that the divinest views of life penetrate most clearly into the meanest emergencies; that so far from petty principles being best proportioned to petty trials, a heavenly spirit taking up its abode with us can alone sustain well the daily toils, and tranquilly pass the humiliations of our condition."¹

But the end was to come. Dr. Allen could not easily lay aside his work, and his last efforts to be physically active when his strength was almost spent were characteristic of his courage and determination. Failing health compelled him to cease from his labors, and death followed a few weeks later, relieving him from the feeling that he was a burden to others who would willingly have supported him indefinitely in his sweet reposefulness.

As the result of his work as a lecturer and as a profound scholar, Dr. Allen left much less in quantity than some other writers because of his many and varied daily services to his fellow-men; but what he did leave is so clear and so sympathetic that the reader cannot fail to see how far removed he was from dogmatism. He did much revision and translation of Roman's works, finishing *The Apostles* but a short time before his death. He was also very active as an editor and as an educational writer. His most important original works are *Fragments of Christian History to the Founding of the Holy Roman Empire*, and *Christian History in*

¹ Sermon on Great Principles and Small Duties, in *Endeavors after the Christian Life* (Boston, 1876), p. 22.



its Three Great Periods,—two singularly attractive books which should do much to give the lay reader a clear and impartial view of the building of the Christian foundations.

Mr. HENRY H. EDGES paid this tribute to the memory of Dr. Allen:—

"They that be wise shall shine as the brightness of the firmament, and they that turn many to righteousness as the stars, forever and ever."

MR. PRESIDENT, could there be found a more fitting text for a discourse upon the life of our associate who has left us since our last meeting than these words of the prophet Daniel? I merely wish, however, to give expression to the sorrow that is in my heart because of the passing of Dr. Allen. I had known him for twenty years and in that time the admiration which I felt for him when our acquaintance began had ripened into a deep affection.

Teacher, seer, theologian, historian, philosopher, sage, Christian gentleman,—these were some of the offices he filled during nearly fourscore well spent years; and yet there was no trace of pedantry in the relations of this classical scholar to his fellow-men, for he loved to hold converse not only with the recondite man of letters but with the plain, untutored yeoman and mechanic. Modesty and simplicity were distinguishing traits in Dr. Allen's strong and well-poised character, in which unselfishness and catholicity of spirit held a high place. He was too profound to be a popular preacher, but he never lacked an attentive hearing among scholars; indeed, in his own doctrinal brotherhood he was long regarded as its intellectual leader. His fine and vigorous and richly-stored mind was actively employed to the very end of his beautiful and useful life, and he may be said to have "died in harness" as he would have wished.

Few, indeed, are they whose likeness can be recognized in Chaucer's portrait of the good Priest in the Canterbury Tales, but who shall say that those lines might not have been written of our venerable friend:—

"Riche he was of holy thought and werk.
He was also a lerned man, a clerk.

Besides he was, and wonder diligent,
And in adversites ful pacient:

Wyd was his parische
This noble ensample to his sheep he yaf,
That first he wroghte, and afterward he taughte,
Out of the gospel he tho wordes caughte,

He was a shepherde, and no mercenarie.

To drawen folk to heven by fairnesse,
By good ensample, this was his businesse.

A better prest I trowe that nowher non is.
He waited after no pompe and reverence,
Ne makid him a spiced conscience,
But Cristes lore, and his apostles twelve,
He taughte, but first he folwid it himselve."

MR. DAVIS presented the following memoranda concerning the Land Bank:—

THE ARTICLES OF THE LAND BANK AND OF THE SILVER BANK.

In the Calendar of the papers and records relating to the Land Bank of 1740, in the Massachusetts Archives and Suffolk Court Files, which is now being printed by this Society, the second entry reads as follows:—

"2 — 102 : 28. 10 March, 1789-40.
Broadside. The Printed Scheme of the Land Bank. Announcing that the Committee will receive subscriptions."¹

The third entry in the Calendar refers to the same volume in the Archives (102), pages 49-55, and the date is entered conjecturally "[March, 1789-40]." The description reads,—

"Part of Articles of Silver Scheme and List of Subscribers, headed by Edward Hutchinson. Total Subscriptions £124,400 proposed to be reduced to £120,000."

Entry No. 2 describes the preliminary call for subscriptions by those interested in the formation of the Land Bank. In the communication to the Society on the subject of this Bank, which was submitted in January, 1895, it was shown that the form of

¹ Publications, iv. 2.

the proposed note described in this Broadside was materially modified before the notes were put into circulation by the Land Bank.¹ It was evident that after the preliminary steps were taken under the above mentioned Broadside, there must have been some intermediate appeal to the public for support before the final steps in launching the Bank were taken. The Broadside described in entry No. 2 of the Calendar is the only preliminary document of this sort, connected with this enterprise, to be found in the Archives. It seems, however, that the Directors, after the consummation of their plans, did print and distribute their perfected Scheme, for public information and as an appeal for support. A copy of this document is to be found in the Library of Congress. It is in folio, four pages in length, the size of the pages being 14½ by 9½ inches.

With regard to the details of the organization of the Silver Bank, we are in one respect better off, namely, that we have in the document described in entry No. 8 of the Calendar a fragment of the actual Articles of Association. This fragment, however, is practically all the information that the Archives furnish on this point, so that, after all, we are not quite so well off as in the case of the Land Bank, since the Broadside, if it does not represent the organization after adoption, does, at any rate, indicate the intentions of the subscribers.

I am able now to supply these gaps in the Archives. In 1741, Franklin entered upon one of his ventures as a publisher to which we are indebted for the information which enables me to accomplish this. The General Magazine and Historical Chronicle for all the British Plantations in America had only a brief existence, but it was long enough to preserve the Articles of these two Schemes. The Lenox Library is the fortunate possessor of a complete file of this Magazine for the six months during which it survived, from which the copies were made which I now offer to the Society.² The Articles of the Silver Scheme are not dated. The date of the proposed note, 1 August, 1740, would, therefore, control. The Articles of the Land Bank were adopted 8 September, and the acknowledgment is dated 4 December, 1740.

¹ Publications, II. 11, 12.

² These two important documents are reserved for publication in Volume IV. of our Publications.

1740
1 Aug
8 Sept
4 Dec

the proposed note described in this Broadside was materially modified before the notes were put into circulation by the Land Bank.¹ It was evident that after the preliminary steps were taken under the above mentioned Broadside, there must have been some intermediate appeal to the public for support before the final steps in launching the Bank were taken. The Broadside described in entry No. 2 of the Calendar is the only preliminary document of this sort, connected with this enterprise, to be found in the Archives. It seems, however, that the Directors, after the consummation of their plans, did print and distribute their perfected Scheme, for public information and as an appeal for support. A copy of this document is to be found in the Library of Congress. It is in folio, four pages in length, the size of the pages being 14½ by 9½ inches.

With regard to the details of the organization of the Silver Bank, we are in a much better off, namely, that we have in the documents in our care, No. 3 of the Calendar a fragment of the *Articles of Association*. This fragment, however, is practically the information that the Archives furnish on this point, so that, after all, we are not quite so well off as in the case of the Land Bank, since the broadsheet it does not represent the organization after it was made, at any rate, indicate the intentions of the subscribers.

I am able now to supply these gaps in the Archives. In 1741, Franklin entered upon one of his ventures as a publisher to which we are indebted for the information which enables me to accomplish this. The *General Magazine and British Chronicle* for all the British Plantations in America had only a brief existence, but it was long enough to give us the *Articles of the two Societies* for the Library of the former, and also of a *Proprietary Magazine* for the six months during which it existed, in which the copies were printed. I now offer to the Society,² The *Articles of the Library*, which are not dated. The date of the proposed note, 1 August, 1749, would, therefore, control. The *Articles of the Library* were adopted 8 September, and the *Proprietary Magazine* 1 December, 1749.

¹ Publications, n. 11, 12.

² These two important documents are reserved for publication in Volume IV. of our Publications.

Borrowed for The Colonial Society of Massachusetts
from the original in the possession of
The State Library.

THE ESSEX COUNTY LAND BANK.

In January, 1895, I submitted a communication to this Society, entitled Provincial Banks : Land and Silver, in which the following statement was made : —

"In Essex County, a bank was organized and a petition in its behalf was presented to the General Court. This bank actually prepared for circulation notes of small denominations. They were dated at Ipswich, 1 May, 1741, and were payable to the order of James Evedale, one third at the end of every fifth year, in produce or manufactures."¹

During a recent visit to the Lenox Library, I was shown, by Mr. Wilberforce Eames, a volume containing mounted specimens of Colonial currency. Among them I found a note of the Essex County Land Bank. It is neatly engraved and reads as follows : —

THE BANK BILL

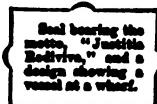
Two Shillings (520)

WE JOINTLY and SEVERALLY,
for our *SELVES* and *PARTNERS*, promise
to take this Bill as *One Shilling*, lawful
Silver Money, at Six Shillings, and Eight Pence
per Ounce, in all Payments Trade and Business, &
for *STOCK* in our *TREASURY* at any Time, &
to pay the same at that Estimate on Demand, to
Sir James Evedale or Order, in the Produce
or Manufactures enumerated in our Scheme; as
recorded in the County of Essex's Records, for Value
recd. Dated at Ipswich, the First Day of May,

1741

2°

2°



[Signed]

JONATHAN HALE.
ROBERT CROATE.
JOHN BROWN.
ESK STEVENS.

¹ Publications, iii. 26.

It will be observed that the promise on the face of this Note is to take the bill at any time, and to pay it on demand, no reference being made to the proposed distribution of the redemptions over fifteen years,—one third at the end of each five years.

The PRESIDENT then said :—

Through the courtesy of a lady of this city I am permitted to offer for the inspection of the Society a manuscript sermon in the handwriting of Cotton Mather. The manuscript covers twelve closely written pages, six and a half by three and a half inches in size, stitched together with white thread, probably contemporaneous with the sermon. The writing is exceedingly minute and not easy to read. I have been able to make out that the text is taken from the First Epistle of John, fifth chapter, ninth verse :—

"If we receive the witness of men, the witness of God is greater; for this is the witness of God which he hath testified of his Son."

At the end of the sermon is the date, "Boston, May 24, 1718," and the note, "preached, Boston, May 29, 1718." As Cotton Mather was born on the twelfth of March, 1662-63, this sermon was written and preached when he was about fifty-five years of age. It does not appear to have been printed.

Mr. DAVIS communicated the following intelligence concerning two local Historical Societies :—

THE HAVERHILL HISTORICAL SOCIETY.

This Society was incorporated 14 January, 1898. Its purposes are —

"To stimulate interest and aid research in the history of Haverhill and neighboring communities by the collection and preservation in some suitable place in the City of Haverhill, of such manuscripts, documents mementoes and reliques as shall serve to explain and illustrate events and the manner of life in successive generations by aiding in the preservation of buildings, monuments and other objects of historic interest and by such other means as shall be deemed fitting."

THE ORANGE HISTORICAL AND ANTIQUARIAN SOCIETY.

An organization with this title was incorporated, 26 January, 1898, "For the collection and preservation of Historical Data and antiquities Illustrative of the manner of life of the early settlers of the town."

Mr. CHARLES SEDGWICK RACKEMANN made the following communication :—

MR. PRESIDENT.—I have brought with me this afternoon two documents which I believe will interest the members. The first paper is the Commission of Brigadier-General Joseph Dwight, as Judge Advocate during the Siege of Louisburg. The original was lent to me by my kinsman, Alfred D. Foster, son of the late Judge Dwight Foster; Mr. Foster, like myself, being a lineal descendant of Joseph Dwight. My own line of descent is through Judge Theodore Sedgwick, who married General Dwight's daughter Pamela.

The name of Joseph Dwight is so well known in the history of Massachusetts that it is unnecessary to do more than mention it in order to attract attention to this Commission. He was a descendant of John Dwight, of Dedham, one of the earliest settlers of that town. General Dwight was born in Brookfield, and became one of the first lawyers in Worcester County, not only in point of time but as regards professional standing. Later, he moved to Berkshire County, where he lived the remainder of his life, and where many of his family, among them our associate, Henry Dwight Sedgwick, still reside. He was a Judge of several courts at different times.

The intermediate history of this Commission is unknown. Mr. Foster obtained it recently in New York City. It bears the signatures of Sir Peter Warren and Sir William Pepperrell, before whom General Dwight took the oath of office, as appears by the jurat on the reverse side. Unfortunately the seal has been torn off.

I have procured, and shall leave with the Society, an excellent photograph of the document. I am sure that the members will like to see also a photograph of the portrait of General Dwight, painted, about 1765, by Blackburn. This picture is now in my house in Milton, and, as the photograph plainly shows, is in a fine state of preservation. The coloring is particularly interesting.

The text of the Commission is as follows:—

PETER WARREN Esq; Commander in Chief of all his Majesty's Ships and Vessels employed, and to be employed in North America, to the Northward of Carolina: &c and

WILLIAM PEPPERELL Esq; Lieut; General, and Commander in Chief of his majesty's Troops, raised in New England, for an Expedition against the French Settlements on the Island of Cape Breton: &c.

To JOSEPH DWIGHT Esq; Greeting

Whereas by the late happy Success of his Majesty's Arms, the Acquisition of the City, Fortresses, and Port of Louisbourg, with the Territories and Ports adjacent, is made to his Majesty's Dominions: and Whereas there are several Prizes now in this Harbour, taken from his Majesty's Enemies, which have Necessaries on board, suitable for the Support of his Majesty's Subjects here; and Others may be dayly expected.

We do, therefore, judging it for his Majesty's Service, and the good of his Subjects, in the present Exigency, to appoint proper Officers, for the legal Tryal, and Condemnation of said Prizes; Constitute & appoint you, (in Confidence of your Loyalty, Integrity, and good Ability) Judge of the Court of Admiralty, for the port of Louisbourg, and Ports adjacent: Hereby willing and requiring You to take Cognizance of all Prizes that are or shall be brought into said Ports; and cause Judgment relating to same to be made, and Execution thereon done according to Law, and Justice: and generally to do and transact all such Matters as to your said Office do appertain. For which This shall be your sufficient Warrant. Given under our Hands and Seals, at Louisbourg, the twentyeth Day of June, in the Nineteenth Year, of the Reign of our Sovereign Lord, George the Second of Great Britain, France and Ireland, King &c. Annoq; Domini 1745.

P WARREN,

By Command of their Honours.

W^o PEPPERELL.

B: Gazette Scry

[Endorsed]

Louisbourg June 21st 1745. The Hon^{ble}; Joseph Dwight Esq; appeared
and took the Oaths appointed by Act of parliament, and subscribed the
Test of Declaration

Before us

P WARREN.

& W^o PEPPERELL.

The other paper is a copy of a letter written by Mrs. Elizabeth Montagu to Mrs. Mercy Warren, wife of General James Warren. Mrs. Montagu was an English authoress of repute, whose Essay on the Writings and Genius of Shakspear had called forth some commendatory verses by Mrs. Warren,¹ and in her gratitude for the appreciation of her book, thus exhibited, she wrote this letter. The handwriting of this paper is not known to me. The indorsement states that the copy was made for Judge Sedgwick. It came to me from among the papers of his youngest son, Charles Sedgwick, having been found in the Berkshire County Court House after his death.

The letter is doubly interesting: it reveals a clear appreciation on the part of the writer of American life and character as they were developed by the Revolution; it also contains a very happy and glowing tribute to the personal character of Washington.

PORTMAN SQUARE, LONDON, Apr. 9th 1795.

DEAR MADAM,— Though conscious of inability to express the gratitude I feel for the honour and favour you did me in sending me your Works, and the admiration and delight with which I read them, yet I have continually regretted that I could not find any opportunity of returning my thanks lest you should ascribe my silence to stupid insensibility. I am now happy that I can couvey my acknowledgments, so highly and so long due, through hands which will give them value by passing through them; Mr. Jay, who, to our infinite regret, is going back to America, promises to get my letter and my Essay on Shakespear delivered to you; the partiality you have expressed for this little work, and the dignity your praise has given to it, could only have encouraged me to the presumption of offering it to you.

When I am about to speak of your compositions, which, on every subject, display the almost perfection and strength of genius, it is difficult to determine with which to begin. Personal interest, indeed, must make my apology if I advert to your Verses on the Essay on Shakespear; and, indeed, there cannot be a greater proof of the energy of talents than when it raises insignificance into consequence and snatches from oblivion what would otherwise have sunk into it; all — all those obligations does my Essay owe to you.

¹ Poems, Dramatic and Miscellaneous, Boston, 1790, pp. 181, 182. These lines, addressed to Mrs. Montagu, are dated Plymouth, 10 July, 1790.

Melpomene's noblest purpose,—to raise the Genius and to mend the heart,—you have happily effected in your Dramas; and every poem of yours, on every subject, has that tendency and improves the heart while it delights the imagination, and the taste. How happy should I be if any opportunity happened which would introduce me to the conversation of her whose Writings I so much admire! But of this I have little hope; you will not leave your happy country and I am too old to visit you. If my age did not prohibit, I should be strongly tempted to indulge myself with the most pleasing of all contemplations,—seeing human Virtue, human talents and human happiness in a very high and still improving state. In all these circumstances, Europe seems to decline, and America to rise; in your Country, the higher classes have all the qualities and accomplishments of the most polished society, and are not enervated nor corrupted by luxury, or rendered frivolous by habits of idle dissipation; with you patriotic sentiments animate and direct the energies of ambition; industry and sobriety lead the lower orders of the people to the enjoyment of plenty and peace. My wishes to visit so happy a country are still increased by my acquaintance with Mr. Jay, whose conversation is the most instructive and delightful, and whose manners the most amiable that it is possible to conceive. If his country cannot spare him, at least indulge us with a visit from his charming son, sometimes.

I am afraid I have already trespassed too long on your time and patience, so I will only repeat my thanks to you for all your favors, and assure you of my sincere good wishes for your health and happiness, and the prosperity of America, its glory successfully established by that first of Heroes and best of Men, Mr. Washington. With the most perfect respect and esteem, I am, dear Madam,

Your most obliged, Obedient and
grateful Humble Servant,
ELIZ'A MONTAGU.

MARY MERCY WALKER,
Plymouth, Ma.

United States of America.

Mr. HENRY H. EDES exhibited an original paper purporting to be a List of the Theses of the Commencers at Harvard College in 1663, and spoke as follows:—

MR. PRESIDENT.—At the Stated Meeting of the Society in March, 1897, I communicated an original unpublished letter written in 1663 by Henry Dunster, the first President of Harvard

Mansfield Normal College. No. 6.3
Entered for the Island County of Skamania
from the original in the possession of
Henry Herbelin.

College. To-day I present for your consideration another original unpublished paper, dated August, 1668, pertaining to the College during the incumbency of Charles Chauncy, its second President. The document, as you will observe, is worn and faded, and in places almost illegible, but, with great difficulty, it has been completely deciphered and put in type. It has been in my possession for more than thirty years.

The paper now before us, which is written wholly in Latin and Greek, purports to be a list of the Theses of the Commencers at the Commencement of 1668, and is believed to be unique, no other copy having as yet been discovered. The only known lists of Theses bearing an earlier date are those of 1642 and 1648, both of which have been printed by Sibley in his *Harvard Graduates*. The earliest in the printed series in Gore Hall is the list of 1687. There is, however, a copy of the Theses of 1670, a broadside, in the cabinet of the Massachusetts Historical Society.

Such of the lists of Theses of the candidates for the Master's degree prior to 1690 as have been preserved, will also be found in Mr. Sibley's pages.¹

Cotton Mather thus describes the proceedings at Commencement in the seventeenth century: —

"When the Commencement arrived, which was formerly the Second *Tuesday in August*, but since, the First *Wednesday in July*; they that were to proceed *Bachelors*, held their *Act* publickly in *Cambridge*; whither the *Magistrates* and *Ministers*, and other *Gentlemen* then came, to put Respect upon their Exercises: And these Exercises were besides an *Oration* usually made by the *President*, *Orations* both *Salutatory* and *Valedictory*, made by some or other of the Commencers, wherein all *Persons* and *Orders* of any fashion than present, were Addressed with proper Complements, and Reflections were made on the most Remarkable Occurrents of the preceeding Year; and these Orations were made not only in *Latin*, but sometimes in *Greek* and in *Hebrew* also; and some of them were in *Verse*, and even in *Greek Verse*, as well as others in *Prose*. But the main Exercises were *Disputations* upon *Questions*, wherein the *Respondents* first made their *Theses*: . . . In the Close of

¹ See an interesting paper on the Subjects for Master's Degree in Harvard College from 1655 to 1791, by the Reverend Edward J. Young, D.D., in *Proceedings of the Massachusetts Historical Society* for June, 1880, xviii. 119-151.

the Day, the President, with the Formality of Delivering a Book into their Hands, gave them their *First Degree*.¹

Mather also says: —

"At the Commencement, it has been the Annual Custom for the *Bachelors* to publish a Sheet of *Theses, pro virili Defendenda*, upon all or most of the *Liberal Arts*; among which they do, with a particular Character, distinguish those that are to be the Subjects of the Publick *Disputations* then before them; and those *Theses* they dedicate as hand-somely as they can, to the Persons of Quality, but especially the *Gouverneur* of the Province, whose *Patronage* the *Colledge* would be recommended unto. The *Masters* do, in an half sheet, without any *Dedication*, publish only the *Quæstiones pro Modulo disputationis*, which they purpose either Affirmatively or Negatively to maintain as *Respondents*, in the *Disputations*, which are by them to be managed."²

It is evident, from what we find in the *Magnalia* and in Sibley's *Harvard Graduates*, that the List we are considering is not a list of Theses of the candidates for the Master's degree. The precise character of our List, however, is yet to be determined. Of its genuineness there can be no question, but whether it is a sober performance and records the order of exercises at Commencement, or a travesty, composed by one or more members of the Class of 1668 or by undergraduates of another Class, is a point upon which I find a difference of opinion among the scholars to whom I have shown the Latin and Greek text and the English version of it, which are now in your hands. The "particular character" by which Mather tells us it was customary to distinguish those propositions which were "to be the subjects of the publick disputations," is presumably found in our manuscript in the cross placed there by another hand, and written in a different ink. It is indicated in the following pages by an x.

The Broadside containing the *Bachelors' Theses* of 1670, already referred to, is the first I have seen in which a "particular character," such as Mather mentions, is found. It is a printed hand placed at the left of the three theses to be disputed: two in *Physics* and one in *Ethics*, which are printed in large italics, the other theses being printed in italics of a smaller size.

¹ *Magnalia* (1702), Book iv. p. 126.

² *Ibid.* Book iv. p. 131.

In the Broadside of 1678, one thesis in *Technology* and three theses in *Physics* are similarly designated.

In 1708, thirteen theses are marked for disputation: one in *Technology*, one in *Logic*, and eleven in *Physics*. The List is printed in Roman type of ordinary size, with the exception of these thirteen theses, ten of which are printed in italics of the same size, and three in very large Roman capitals. Two "particular characters" are used in this List: a dagger, with its point towards the thesis, preceding the ten theses printed in italics, and a hand, performing similar service in the cases of the three theses (in *Physics*) which stand forth in Roman capitals.¹

I have not succeeded in my endeavor to identify either the handwriting or the authorship of this document, which was long in possession of the Woodbridges of Connecticut. If the paper is a travesty, it is not unlikely that undergraduates of the Class of 1668 — then members of the Junior Class — had a hand in its composition. Among the members of that Class were the Reverend John Woodbridge,² of Killingworth (now Clinton) and Wethersfield, Connecticut, and the Reverend Josiah Flynt, of Dorchester, Massachusetts, the father of Tutor Flynt. Woodbridge was a grandson of Governor Thomas Dudley, and cousin-german, through the Dudleys, of the Reverend Simon Bradstreet (H. C. 1660), of New London, Connecticut, who took his Master's degree in 1668, the date of the paper we are considering, both of whom may have contributed to this performance. Woodbridge was also brother-in-law to Bradstreet, who married his sister Lucy, 2 October, 1667.³ Of the members of the Class of 1668,

¹ Our associate Mr. William Coolidge Lane, raises the question whether Mather's expression "particular character" did not refer to the kind of type used rather than to the cross or the index hand. Mr. Lane also writes: —

² The Latin list of theses began at same time to be supplemented by an English "Order of Exercises," of which our earliest example is for 1791. In this year the two subjects of the theses distinguished by the pointing hand and by small caps appeared on the English Order of Exercises as "disputations," in which several students took part. The theses for 1792 are the last in which any distinction of type of this kind is made. In 1810 the broadside form comes to an end, and in 1811 the folded quarto begins. The printing of theses continues down to and including 1830, since which time the Commencement programme has consisted simply of the list of names and order of exercises."

³ The Reverend Timothy Woodbridge (H. C. 1675), long a prominent figure in academic, ecclesiastical, and political circles in Connecticut, was a younger brother of John Woodbridge of Killingworth. See ante, pp. 77, 78.

⁴ Savage's Genealogical Dictionary of New England, i. 236.

Samuel Corbet, afterward the schoolmaster of Bristol, Massachusetts, and the Reverend Benjamin Blakeman, of Stratford, Connecticut, and other places, are the persons most likely to have been concerned in this undertaking.

Of all these alumni, however, the one who seems to have been the best qualified for the authorship of the Theses, or of many of them, is the Reverend Josiah Flynt, notwithstanding the fact that the manuscript bears little or no resemblance to those specimens of his handwriting with which I have compared it, and, doubtless, was written by another hand. He was a nephew of President Hoar, whose sister Margery had married the Reverend Henry Flynt, of Braintree, Massachusetts, the father of Josiah Flynt. While in England, Dr. Hoar wrote to his nephew a pretty severe letter concerning his studies at Cambridge and the manner in which they should be pursued, which bears date 27 March, 1661. If the young man profited by his uncle's advice, he was remarkably well equipped to undertake the composition of such a paper as the one now before us. Here are some extracts from Dr. Hoar's letter:—

"Your account of the course of your studies, as now ordered, under the worthy Mr. Chauncy, is far short of my desire; for its only of what you were then about; whereas it should have been a delineation of your whole method and authors, from your matriculation till commencement. Therefore I can still touch but upon a few generals for your direction. The first is this, that you would not content yourself with doing that only, which you are tasked to; nor to do that merely as much as needs must, and is expected of you; but daily something more than your task: and that task, also, something better than ordinary. Thus, when the classes study only logick or nature, you may spend some one or two spare hours in languages, rhetorick, history, or mathematics, or the like. And when they recite only the text of an author, read you some other of the same subject, or some commentator upon it, at the same time. Also, in your accustomed disputations, do not satisfy yourself only to thieve an argument, but study the question beforehand, and, if possible, draw, in a book on purpose, a summary of the arguments and answer on all hands; unto which you may briefly subjoin any thing choice and accurate, which you have heard in the hall, upon the debate of it in public.

"Nextly. As you must read much, that your head may be stored with notion, so you must be free and much in all kinds of discourse of what

you read, that your tongue may be apt to a good expression of what you do understand. And further; of most things you must write too; whereby you may render yourself exact in judging of what you hear or read; and faithful in remembering of what you once have known.

"Fourthly.—As to the authors you should distil into your paper books in general; let them not be such as are already methodical, concise, and pithy as possible; for it would be but to transcribe them, which is very tedious and uncouth: rather keep such books by you, for immediate perusal. But let them be such as are voluminous, intricate, and more *jejune*; or else those *fractabili*, that touch only on some smaller tendrils of any science; especially, if they be books that you do only borrow, or hire, to read.

"Seventhly.—One more quire you may take, and rule each leaf into four columns, and therein note, also alphabetically, all those curious criticisma, etymologies, and derivations, that you shall meet withal in the English, Latin, Greek, and Hebrew tongues. I still mean, by the by, while you are seeking other matters; not which you may gather out of vocabularies and critics, that have purposely written on such subjects, for that were but *actum agere*.

"Eighthly.—Be forward and frequent in the use of all those things which you have read, and which you have collected; judiciously moulding them up with others of your own fancy and memory, according to the proposed occasions; whether it be in the penning of epistles, orations, theses or antitheses, or determinations upon a question, analysis of any part of an author, or imitations of him, *per medium genesee*. For so much only have you profited in your studies, as you are able to do these. And all the contemplations and collections, in the world, will but only fit you for these.—It is practice, and only your own practice, that will be able to perfect you. My charge of your choice of company, I need not inculcate; nor I hope that for your constant use of the Latin tongue in all your converse together, and that in the purest phrase of Terence and Erasmus."¹

Whatever the character of this performance shall prove, in the end, to be, it is the first preserved effort of the Commencements to entertain and amuse as well as to display their acquirements in the arts, and thus marks an epoch. It reveals intelligence, wit,

¹ The full text of this letter may be read in 1 Massachusetts Historical Collections, vi. 100-108.

acuteness, brilliancy and maturity of mind in its author or authors, and is creditable alike to the students of Chauncy's time and to their instructors.

The text of this paper is as follows:—

[*Theses of 1663.*]

Viris terq; quaterq; Conclamatissimis omni Laudis Gradu majoribus. Quocunq; honoris fastigio ornandis, onerandis, honorandis, probitatisq; omnigenae celebitate clarescentibus.
 Ipsi Cesarei majestatis vicario
D. IOHANNI ENDICOTTO celeberrime Massathusettensis Colonise Satrapes megalico, non vulgariter venerabili
 natus eisq; item feliciter conjunctarū N-Anglie Coloniarii Praetoribus,
 plus plurimo celebrandis. Earundemq; Synarchis nullo nō honoris gradu cumulandis, cumulatis.
 multisq; Reverendis Ecclesiarii Angelie hand nequicquam observandis.
 Rerū Academicarū Spectatoribus spectatissimis quorū memoria
 alet posteritas Intaebitur eternitas:
 omni etiam literari foventi, literatori faventi:
Theses haec (quarti Numine secundante sub Preside CAROLO CHAUNCY.
 S. S. Theol: Bac: in Col: Harv:
 pro tenuibus viris fibris ut veritatē propugnant Labores exantabunt
 Iuvenes in Artibus velites d d d Q¹

Theses technologicas.

Creatura speculū in quo Ars est Imago sapientiae eternae.
 Datur enti & egressus ab infinito, & progressus in infinitū. X
 Encyclopedias est sphera Activitatis Rationalis. X
 Precepta Artis nec orti nec occasi nō sunt.
 Natura est Artis Nutrix, Ars Natura est Adjutrix.

Theses Rhetoricae.

Grammaticae Epilogus est Rhetorica Prologus.
 Rhetorica est Rationis et orationis parparisatio.
 Rhetoris est Sophistici verba dando verba dare.
 Systole vel Diastole sunt Hyperboles Causa Synectica.
 Apostopeis est Enthymema Rhetorica. X

¹ These letters presumably stand for donant dicent dedicantque. On the use of letters at the end of the Dedication of the Commencement Programme, see Note on pp. 334, 335, post.

Ars a Naturā originis potius, Natura ab Arte actionē perfectivā patitur.
 Natura est Artis exemplar, Ars Naturae exemplū. X

Entia a primo sunt ab ente primo participia præteriti, praesentis & futuri temporis.

Logica.

Logica est respectu specierū Intellegendarū Nervus opticus.

Invenio est fodina, judiciorū Argumentorū Lapis Heraclius.

Finis causarū omnī est primū mobile.

Materia est forma cathedra, forma materis Episcopus.

Edificis est compositi Architectura. X
 Universalia sunt in se desponsis in re sphaeris Asterismi.

Species & Individua sunt prospici & genus generis.

Substantia est Accidens et extensus.

Accidens commune est per totā sphærā substantiarū planeta.

Subjectū est Adjunctori Bejulus.

Majus & minus Extensionem, magis & minus Intensionē sonant.

Relata sunt Gemini contemporanei.

Contraria Anteeci sunt, Disparata¹ Pericci.

Contradictria totū mundū dividant & Imperant.

Qualitas est Similitudinis origo & dissimilitudinis Scaturigo.

Natura proterō Hysterō est cognitione Hysterō proterō.

Dichotomia est Logica Anatomia.

Avrē ἄρε, est ipsa divini testimonij forma.

Syllogismus est trianguli cuius basis est conclusio.

Lumen conclusionis Eliditur et Elicoit ex chalybe & silice premissarū.

Monotonia est Rhetorica "Aproposito."
 Gestus est Suadis personatio.

Mathematica:

Mathesis est Intellectus Diadema.

Arithmetica est principiū organi Mathematici. X

Ciphra dant quod non habent.

fractiones sunt unitatis Analysis Anatomica. X

Geometria est Nebulo Angularia.

Linea & superficies sunt principia interna corporis mathematici. X

Basis est figura hypopodium.

Astronomia est Corporū Cœlestium Scelerū in Intellectū. X

Non dant orbes distincti nisi aere atmospherae.

Planeta sunt Stelle fixe, Stelle fixe sunt paralyticas.

Sol est exercitus cœlestis Imperator.

Tempus est Soboles motus cœlestis.

Ethica.

Ethica est vitiiorū Empiastri corrosiva.

Virtus est vitiiorū extremorū Progenita.

Virtus nescit & latitudines & destinationes.

Finis, & boni, per se sunt parallela.

Dives est Amphictius.

Honos est Ignis fatuus fugientes sequentes fugiens.

Saligia² est vitiiorū Synopis.

Homo vitiosus est Centaurus.

Positō bono temperamento Corporis ponitur virtus, & vice versa. X

Rex Lex & Grex sunt partes, Républīcam constituentes.

Physica.

Physiologus est corporū Naturalis & Natura dissutor.

¹ See post, p. 332, note.

² In writing this word in the original, the scribe employed the mediæval characters used in the sixteenth and seventeenth centuries by both scriveners and printers to express the Greek letters σσ and ςς.

³ Sacrilegū may have been intended, but the word is plainly written Saligia in the original.

Dilemma est Amphibiosa venenosa. X

Sophisma est Argumentori manegonii.

Methodus est Ataxis Antagonista, & Syntagmatica axiomati Catastasis.

Grammatica.

Grammatica est Janua Linguae & philosophiorum Proscholiarum. X

Orthographia & Orthoepia Ancillænter Grammaticæ.

Quatuor Elementa Gutturalia (apud Hebrews) inter se transmutantur. X

Etymologia est verborum fractio Analytica. X

Filia & filius sunt dubij generia.

Hic hic ille vox est hilaris bone Natura.

Poeta est inventiois factor.

Licentia poëtæ est Haresis Grammaticæ.

Natura est omnis Actionis Naturalis directrix & Rectrix.

Materia prima a Quant[it?]ate formata est.

Elementa sunt corporis mixtorum terminorum a quo & ad quæm. X

In Elementatis datur belle civile.

Aer est globi terræ Pericardium.

Quævis forma eæ quævis materia nō vult matrimonio conjungi.

In animalibus unio animæ cū corpore est Eordi forma.

Planta est animalis Embryos.

Quantitas est Elementorum contrariorum in mistis Anacampsæros.

Sol est ignis, nubes sunt pluvias Alembicæ.

Omnis sensus exterior est mercurius politus.

Sensus internus est omnis specierum sensibiliæ Xenodochiæ.

Homo est omnis entitatis sporades constellatae.

Spiritus animales sunt Hyphen Animæ rationalis & corporis.

Caput est intellectus, Cor voluntatis Solis.

Cantabrigie Nov = Anglie :
Quinto Idæ Augusti An° Magni Jubilæi MDCLXIII.¹

[Translation.²]

To the men most celebrated, exalted above all praise; worthy to be adorned, laudèd and distinguished with every height of honor; and illustrious through their reputation for every kind of virtue, [namely,]

¹ This date, 9 August, 1663, which fell on Sunday, does not agree with the date of Commencement that year, which occurred on 11 August, — the second Tuesday. (See p. 220, post.) This discrepancy as to the date can be accounted for by assuming that the author or authors forgot that the Idæ of August fell on the thirteenth of the month instead of the fifteenth as in July when, probably, no inconsiderable part of this paper was written.

² I am indebted to our associate Professor George Lyman Kittredge, and to Mr. William P. Upham for valuable suggestions and aid in making this translation. Furthermore, without Mr. Upham's expert assistance, it would have been impossible to present in type a complete decipherment of the worn and faded manuscript of which a photogravured facsimile is herewith presented.

To the representative of Imperial Majesty, Mr. JOHN ENDSCOTT, the august and most venerable Potentate of the most famous Colony of Massachusetts,

To the Governors also of each one of the happily United Colonies of New England, to whom the highest tribute of respect is due, and

To the Assistants thereof, who should be and are loaded with every degree of honor,

To the very Reverend Ministers of the Churches, always to be dutifully observed,

To the most distinguished Overseers of the University whose memory posterity shall cherish and eternity preserve, and, finally,

To every friend of Literature and patron of men of letters,

These Theses (the truth of which, with the Help of the Deity, under the presidency of CHARLES CHAUNCEY, S. S. Theol: Bac: in Col: Harv:, they will, according to their poor abilities, labor to the utmost to maintain)

The youthful Skirmishers in the Arts present, devote and dedicate.

Theses Technologicae.

The creature is a mirror in which Art is the Image of eternal wisdom. Being hath both a departure from the infinite and a progress into the infinite. X

The Encyclopedia is the Sphere (the whole round) of Rational Activity. X

The precepts of Art know neither rising nor setting.

Nature is the Nurse of Art; Art is the Handmaid of Nature.

Art derives its origin from Nature; Nature experiences perfecting action from Art.

Nature is the Pattern for Art, Art a sample (specimen) of Nature. X

Primal Essences are, from the beginning, partakers of the past, the present and the future.

Logical.

Logic, with respect to the Perception of ideas, is the Optic Nerve.

Invention is the mine, judgment the Lodestone of Arguments.

The Final Cause is the primus mobile of all Causes.

Theses Rhetoricae.

The Epilogue of Grammar is the Prologue of Rhetoric.

Rhetoric is the clothing in purple of Reasoning and Oratory.

It is [the part] of the Sophistical Rhetorician to deceive by the use of words.

Systole or Diastole is the efficient cause of Hyperbole.

Aposiopesis is a Rhetorical Euthymeme. X

Monotony is Rhetoric without [the rhythm of] the Muse.

Gesture is the impersonation of Persuasion.

Mathematicæ.

Mathematics is the Diadem of the Intellect.

Arithmetic is the principal Tool of Mathematics. X

Ciphers give what they have not.

Fractions are the Anatomical Analysis of Unity. X

The Geometer is an Angular Wretch.

Line and Surface are the vitals of the mathematical body. X

Matter is the Bishop's throne of form; form is the Bishop of matter.

The Efficient Cause is the Architect of the composite. X

Universals are little Stars, in themselves ever shining, but invisible in the (concrete) thing.

Species and Individuals are both the stock and the offspring of Genus.

Substance is the caravansary of Accidents.

Accident in general is a planet-wanderer through the whole range of substances.

The Subject is the Porter of Attributes.

Greater and lesser signify Extension; more and less signify Intensity.

Related things are contemporary Twins.

Contraries are *Anteci*;¹ Differents are *Paricci*.²

Contradicteries divide and Rule the whole world.

Quality is the origin of Similitude and the Fountain of dissimilitude.

What in nature is *Proteron Hysteron* is in cognition *Hysteron Proteros*.

Dichotomie is Logical Dissection.

Abric άριτη is the very form of divine testimony.

The Base is the footstool of the figure. Astronomy is a Skeleton of the Celestial Bodies within the Intellect. X
Defined orbs (the spheres of the Ptolemaic astronomy) exist only in the mind of man.³

The Planets are the fixed Stars;

Fixed Stars are paralytic.

The Sun is the Generalissimo of the celestial army.

Time is the Offspring of celestial motion.

Ethical.

Ethics is a corrosive Plaster for vices. Virtue (the mean) is the Daughter of the vices, which are the extremes.

Virtue knows neither Latitude nor Declination.

The End and the Good are per se parallel.

The Rich Man is Amphiscius.⁴

Honor is an Igne satans pursuing those that flee and fleeing those that pursue.⁵

[.]⁶ is the Synopsis of vices.

The vicious Man is a Centaur.

Granted a good temperament of Body, virtue follows, and vice versa. X

King, Law, and People are the parts constituting a State.

Physical.

The Student of Natural Science is the ripper-up of Natural Bodies and of Nature.

Nature is the Guide and Governor of all Natural Actions.

Primal Matter was formed from Quantity.

The Elements are the *termes a quo* and *ad quem* of compounds. X

In bodies composed of the Elements there exists a civil war.

The atmosphere is the Pericardium of the terrestrial globe.

Every form will not join in matrimony with every material.

In living beings the union of Soul with Body constitutes their [distinctive] form.

The Plant is the Embryon of the Animal.

Quantity is the *Anacampsesis*⁷ of contrary Elements in compounds.

The Sun is fire; the clouds are the vapors of an Alembic.

Every external sense is a Messenger of State.

The inner sense is the Caravansary of all perceptible phenomena.

Man is the constellated spores of all beings.

The Animal Spirits are the Hyphens between the rational soul and the body.

The Head is the Throne of the Intellect; the Heart, of the will.

Cambridge in New England:

The Fifth of the Ides of August in the year of the Great Jubilee,
1668.

¹ I am indebted to the Hon. William Everett for the following note:—

"Anteci, paricci, and amphiscius are Greek words, belonging to the theoretical geography of former days. Anteci are those who live in another polar hemisphere but on our meridian, and in an equally numbered (south) latitude. Paricci are those who live on our parallel, half way round the globe. Amphiscius is said of a dweller in the tropics who casts his shadow both ways. Disparax evidently has a peculiar meaning; according to the scholastic logic or rhetoric. In classical Latin, it means the same as *Centauria*."

² See Theses of 1642: LOGICAS, 1, — *Universalia non sunt extra intellectum*; also RETRAGAS, 11, — *Non datur orbis in caelo*. (1 Proceedings of the Massachusetts Historical Society for March, 1860, iv. 442, 443; Sibley's Harvard Graduates, i. 19, 20.)

³ See Theses of 1643: ETHIC, x, — *Honor sequitur fagit, fugientem sequitur*. (1 Proceedings of the Massachusetts Historical Society for March, 1860, iv. 445; Sibley's Harvard Graduates, i. 76.)

⁴ See ante, p. 330, note.

⁵ An herb having the power to reconcile or to produce reciprocal affection.

NOTE.

The use at Harvard of letters at the end of the Dedication of the Commencement Programme down to the year 1781 was far from uniform.

In 1642, no letters were used, the Dedication of that first Programme ending with the words "*dicunt consecrantur in artibus liberalibus inititi Adolescentes.*"

In 1643, we find "D. D. D. in artibus liberalibus initianti Adolescentes."

The unique broadside for 1647 is imperfect, lacking the upper half, including the Dedication.

In 1670 and 1678, the letters D. D. DQ. — the same that are found in our text — were used, but no period is placed after the third D which is close to the Q.

In 1687, the form is extended to L. M. D. D. D. Q.

In 1708, the letters M. D. C. Q. appear.

In 1711, only three letters were used, — D. D. D.

In 1717, 1719-1723, 1725-1727, and 1730, the use of six letters was resumed, and we find L. M. D. D. C. Q.

In 1731, the form was contracted to D. D. C. Q.

In 1732-1735, 1737-1742, there was a return to the form L. M. D. D. C. Q.

In 1743-1751, 1753-1756, 1758-1773, 1776-1780, seven letters were employed, — L. M. D. D. C. C. Q.

In 1781, letters were discarded and *Huncilline Dedicant* appears in their stead. This form was used down to 1808, when the use of an entirely new formula begins in which the distinguishing verb is *Inventant*.

Mr. William Garrett Brown, of the Harvard College Library, remarks upon the various unsuccessful attempts which have been made to interpret the letters found in the Programmes before 1781. Our associate Mr. William Cross Williamson (H. C. 1852), has suggested the following interpretation of the mysterious letters, which is both excellent and reasonable, and must stand until a better rendering is offered for the consideration of scholars:—

- 1643 *Dicunt dicant dedicant.*
- 1670 *Dicunt dicant dedicantique.*
- 1687 *Liberentes merito dicunt dicant dedicantique.*
- 1708 *Merito dicunt consecrantur.*
- 1711 *Dicunt dicant dedicant.*
- 1717 *Liberentes merito dicunt dicant consecrantur.*
- 1731 *Dicunt dicant consecrantur.*
- 1732 *Liberentes merito dicunt dicant consecrantur.*
- 1743 *Liberentes merito dicunt dicant curant consecrantur.*

As no complete set of the Harvard College Theses is known to exist, the following lists of these broadsides, dated before the Revolution, may be of interest and value:—

Harvard College Library has copies for the years 1687, 1720, 1727, 1730, 1732-1738, 1737-1742, 1744, 1748, 1747-1751, 1753-1756, 1758-1760, 1762, 1763, 1765-1772. The Library also has a complete set from 1776 to the present time.

THE AMERICAN ANTIQUARIAN SOCIETY has copies for the years 1730, 1722, 1720, 1725-1727, 1730-1732, 1737-1751, 1753-1756, 1758-1763, 1765-1772.

THE MASSACHUSETT HISTORICAL SOCIETY has copies for the years 1642, 1647, 1670, 1678, 1706, 1711, 1719-1721, 1741, 1759, 1762, 1767, 1768, 1772.

YALE UNIVERSITY LIBRARY has copies for the years 1754, 1758, and 1769 only. The Library does not own the broadsides once in the possession of President Stiles, namely, those for the years 1670, 1713, 1719, 1748, 1754, 1760, 1768, 1768, 1769, 1774, 1777-1779, 1781, 1782, notwithstanding the following entry in his Diary:—"I have found it very difficult to recover the printed *Theses, & Catalogues*. However, I have succeeded in collecting those which I have deposited with the College Archives" (Stiles's Diary, ii. 244, 288; iii. 29, 40).

The KEEZER INSTITUTE has none earlier than that for 1780.

A curious mistake occurred in printing the Theses of 1761. In some, if not all, of the impressions the date is printed MDCCXLII, while the list of names is that of the Class of 1761, and the Dedication is to Governor Bernard. One such impression is owned by the American Antiquarian Society, and another by the Boston Athenaeum, which owns no other original broadside containing any of the Harvard Theses prior to the Revolution.

I am indebted to the Librarians of the above-named institutions for these lists or for the opportunity to make them, especially to Mr. Lane and Mr. Burton who have been untiring in their helpfulness.

MR. JOHN NOBLE spoke as follows:—

There seems to be no reason to doubt that this is a genuine, original manuscript of the date which it bears; but is it an authentic set of Theses for a Harvard Commencement, duly drawn up and approved, or is it a burlesque or travesty of such a programme, skilfully got up by some ingenious, scholarly, fun-loving students, — a successful, even brilliant satire? The latter conclusion seems almost irresistible upon the only evidence we have, — internal evidence. In form and general features, the document satisfies either condition; in tone and effect, only one. Taken as a whole, a rollicking, exaggerated, startling, original, unlicensed air runs through the paper, every device being resorted to and every art employed to secure the effect apparently desired. There is a running fire of puns, antitheses, alliterations, curious collocations of words, ingenious similarities of sound and form, strange juxtapositions of expressions and ideas, suggestive analogies, unexpected turns and applications, odd contrasts, paradoxes, and conceits, from beginning to end. It is all a blaze of literary and scholastic pyrotechnics.

Whatever may be said of the Latin of the old Puritan worthies, it was usually good according to their light and to the scholar-

ship of a time before the days of German philology,—sober, quaint perhaps, stilted, but more or less severe, and with a sort of theological or ecclesiastical flavor. Here everything is exuberant, fresh, untrammeled, frolicsome. A Greek strain is in it all; words are ingeniously adopted, combined, and coined,—Latinized Greeks some of them may be called,—and both languages are drawn upon successively and conjointly, while brains as well as lexicons are ransacked for effective material.

The Dedication has the usual form and external features, but by no means the usual character and air. There is a strain of mockery, a piling up of strange adjectives, a tone sarcastic and ironical rather than decorous and deferential. The nouns and terms are out of the common course and a latent humor or satire is evident in the selection of them. *Satrapes* appears in place of *Governator*,—the title from 1642 down to the time of the better scholarship of our late honored associate Professor Lane. Its use seems to have been rather a daring reflection upon their Governor, his character and ways, in its Oriental suggestions,—not lessened by the description, *non vulgariter venerabili*, in which, with its double sense, seems to lurk a covert sarcasm, not brought out, or even wholly lost, in the rendering of the translation, however correct that might be if the whole thing were sober. Even then, a question might arise on *vulgariter*. *Præteribus* is a deviation from common usage, and *Spectatoribus*, evidently selected for the sake of *spectatissimis*, which follows it, takes the place of the time-honored *Inspectoribus*. *Synarchis* is a literal and neat rendering of Assistants, but the term *Magistratus* is that ordinarily used in the formal title, in court records and legislative phrase. *Angelis*, as applied to the Reverend Clergy, in view of some prevalent notions as to their temper, suggests a possible slur. Familiarity with the Apocalypse,¹ however, may have led to its use in place of the *Venerandis Ecclesiæ Pasteribus* found in some Dedications; and this without regard to the controverted question as to the use of the term. *Numine* seems a word not likely to be applied to the Lord by a Puritan, even if he shrank from the *Dæmons* of the Liturgy. It is found, however, in a later programme (1730) qualified by a saving adjective,—*Divine*. *Cœs-*

¹ The Revelation of St. John, II. 1, 8, 12, 18; III. 1, 7, 14.

rea Majestatis has something in it of an audacious slap at the reigning monarch, and the Governor does not escape in the *vicario*. The Honorable and Reverend Overseers have a promise of more than earthly fame and immortality, which can hardly escape the suspicion of irony. *Velites* takes the place of the invariable *Adolescentes*,—a most felicitous, suggestive, and witty substitution.

As a few instances of the verbal devices and artifices before mentioned, may be taken: *ornandis, onerandis, honorandis; celebritate clarescentibus; megaloso; cumulandis, cumulatis; literarum ferventi, literarum faventi; exantabunt;* and, in the Theses following, *originis petitur . . . actions . . . patitur; dæpareis in re dæpareis; eliditur et elicetur; virtus, & vice versa; Rex Lex & Grec.* Many others occur, too obvious to need enumeration.

Strong as is the evidence afforded by the Dedication, that to be found in the structure and subjects of the Theses themselves seems even more convincing. Here are the same general characteristics already described. In addition, there are many new features. There is a much wider field for literary and scholarly gymnastics, and it is fully occupied. There is greater opportunity afforded for the display of curious scholarship, out-of-the-way learning, far-fetched fancies, wit, humor, laborious research, skilful contrivance, and intellectual ingenuity, and it is fully embraced. There is a masterly array of definitions in some of the subjects proposed for discussion, and most of the propositions are exceedingly felicitous in conception and expression. Queer analogies, original illustrations, ingenious and surprising suggestions, strangely-contorted uses of words and ideas, quips, jokes, sarcasms, conceits,—all run through it from start to finish. The entire List is a work of art of very considerable brilliancy, quite unlike the conventional, authentic programme, although there occasionally comes in some commonplace proposition for discussion to give the whole an air of verisimilitude. Each subject well justifies discussion, and demands a paragraph to itself; each is full of suggestions and bristles with distinctive points; each, on varying and independent grounds, supplies an argument. To undertake, however, to give specific points, or to name peculiarly striking passages, would, of necessity, end in the repetition of almost the entire List, which can well enough be left to speak for itself.

The translation furnished by Mr. Edes is most excellent; indeed, it is so good that it seems, sometimes, to veil absurdities, and occasionally to lose a point that possibly lurks in the original.

The date at the conclusion furnishes an additional argument for my contention, and one of no little force. The text fixes a different day from that on which the Commencement took place; and, above all, it makes it Sunday,—just the sort of device likely to be found in a travesty,—a deliberate intent and not a mistake. Such an explanation seems more probable than the supposition that there would occur in a paper so carefully and laboriously and learnedly constructed a blunder of forgetfulness or of ignorance.

One circumstance, apparently, militates against the conclusion I have reached,—the character of the subjects indicated by the cross as those to be the subjects for public discussion; but even this may be one of the devices resorted to as a part of the scheme.

If this manuscript is the authentic programme for the College Commencement of 1668, its value and interest are obvious; if it be the travesty of it, both are even greater, because it is unique. Its importance, however, does not lie in this circumstance, but in other and many directions: it throws light on the condition of the College, and the standard of the education and training then given; and it gives some indication of the extent and character of classical attainments among the students at the time, of their practical ability and facility in handling the two languages, and of what their studies were in various directions. It shows also some interest and progress in metaphysical speculation. It also has value as indicating the subjects in which students were interested, their turn of thought, and the direction and extent of their researches. It brings out, too, what was then one of the boyish notions of fun and humor; it reveals their capacity of design and execution; and affords some insight into the student human nature of the seventeenth century. It has a certain interest again as bringing out likenesses to and contrasts with similar attempts of later days, and may perhaps remind a Harvard man of the old Mock Parts and of some of the distinctive literature of college and club magazines and papers. It has something of the familiar smell of the lamp and the gridiron. Taken all in all, the document, whatever it be, is certainly curious and ingenious, and of great interest and value.

In this discussion of the manuscript which Mr. Edes has brought to our attention, no attempt has been made to take up all the many points which might have been considered, opening up, in their number and variety, in an almost confusing and discouraging array, but only to touch upon a few, here and there, as illustrative, in different ways, of the character of the paper and as leading to the conclusion at which I have arrived.

The paper was further discussed by many of the members.

MR. ABNER C. GOODELL expressed the opinion that it was a travesty or burlesque written by some of the Commencers or undergraduates.

MR. HENRY WILLIAMS inclined to the view that the paper was a serious performance and remarked upon its excellence and epigrammatic style.

MR. GEORGE LYMAN KITTREDGE said he had not seen the Latin text before reaching the Hall, but that, while he reserved his opinion upon the precise character of the paper until he should have had time to study it, the document recalled vividly to his mind Milton's Comic Oration at the English Cambridge,—a performance which Milton deemed worthy of preservation in his printed works. He further remarked that it would be interesting to know if a practice similar to that which was common at the English universities in Milton's time obtained at Harvard College, and if these Theses of 1668 afforded evidence of it.

MR. JAMES BRADLEY THAYER, who was unable to be present, sent for the inspection of the members a printed copy of the Theses of 1810.

Mr. Edes exhibited a perfect copy of Israel Chauncy's Almanac for 1668, which gives the date of Commencement at Harvard College that year as Tuesday, 11 August. This pamphlet, long in Mr. Edes's possession, was regarded by the late John Langdon Sibley as unique. It is peculiarly interesting from the fact that it bears upon the title-

page the autograph "Jonathan Mitchell *ex dono Authoris*
febr 23."¹

Mr. EDES also exhibited the original Third Writ of Quo Warranto against the Connecticut Charter and the original Search Warrant for the apprehension in Connecticut of the Regicides Goffe and Whalley.²

Mr. ROBERT N. TOPPAN commented upon these documents and upon the First and Second Writs, drawing attention to certain discrepancies in the dates.³

HERBERT BAXTER ADAMS, LL.D., of Johns Hopkins University, the Hon. HORACE DAVIS, LL.D., of San Francisco, California, WILBERFORCE EAMES, A.M., of the Lenox Library, and the Rev. WILLIAM JEWETT TUCKER, LL.D., President of Dartmouth College, were elected Corresponding Members.

¹ As to the spelling of Mitchell's name, cf. Mather's *Magnalia* (1702) Book iv. pp. 162, 166, where both Increase and Cotton Mather use a single final "l"; and Paige's *History of Cambridge*, p. 268, note, where the orthography is discussed.

² These documents were printed, with notes by Mr. Edes, in the *New England Historical and Genealogical Register* for 1868 and 1869, xxii. 345-348 and xxiii. 160-171.

³ Mr. Toppin discussed this subject in a note to his *Edward Randolph* (*Publications of the Prince Society*), iv. 138. See also *Ibid.* v. 24, 32. The following letter gives some further particulars which are of value:—

HIGHLAND STREET,
CAMBRIDGE, 24 May, 1896.

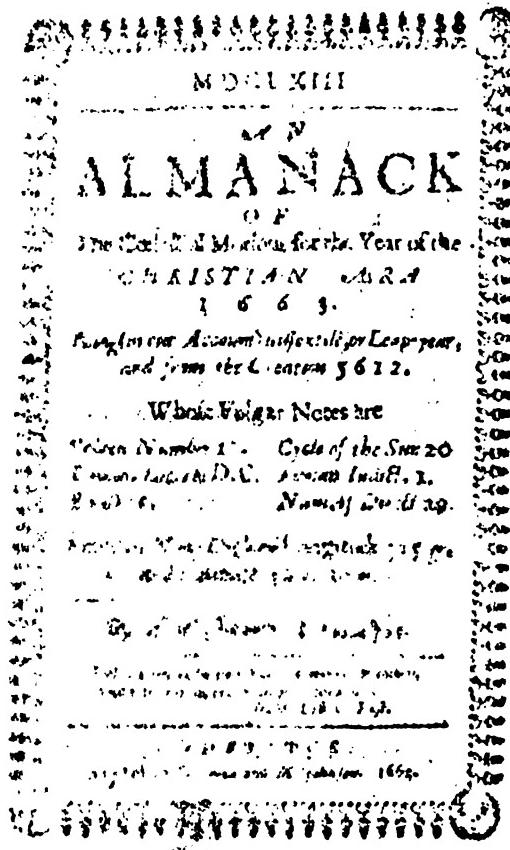
MY DEAR MR. EDES.—The problem about the date on the First and Second writs of Quo Warranto against Connecticut has finally been solved by the trouble taken by our associate Professor Ames and the information given by Professor Langdell, who said that certain writs from the King's Bench had to be dated in term time and were, therefore, dated back, sometimes, in order to have legal effect. By examining Bond's Handy-Book for verifying dates,¹ I find that in 1665, Easter day was the Nineteenth of April and that Trinity Term began that year on the Nineteenth of June and ended on the Eighth of July. The writs were, therefore, dated back to the last day of the term.

Yours truly,

R. N. TOPPAN.

Mr. HENRY H. KANE.

¹ *Handy-Book of Rules and Tables for Verifying Dates with the Christian Era.* By John J. Bond, Fourth edition. London, 1869, pp. 173, 684.



[2]—the autograph "Jonathan Mitchell *ex dono Authoris
d. ad. 23."*¹

Mr. ELLIS also exhibited the original Third Writ of Quo Warranto against the Connecticut Charter and the original Search Warrant for the apprehension in Connecticut of the Bay-sides Gode and Whalley.²

Mr. ROBERT N. TORRAN commented upon these documents and upon the First and Second Writs, drawing attention to certain discrepancies in the dates.³

HENRY BURKE ADAMS, LL.D., of Johns Hopkins University, the Hon. HORACE DAVIS, LL.D., of San Francisco, California, W. CLAUDIO R. EAMES, A.M., of the Lenox Library, and the Rev. WILLIAM JEWELL TICKER, LL.D., President of Dartmouth College, were elected Corresponding Members.

¹ According to the spelling of Migne's *Vetus et Novus Testamentum* (1702) Book iv, pp. 162, 170, where both occur in the same chapter, though in a single final "U"; and Tappan's *History of Cambridge* (1850), vol. 1, where the orthography is discussed.

² These documents were printed, with note by Mr. Ellis, in the New England Historical and Genealogical Register for 1868 and 1869, xxii. 315-318 and xxiii. 159-171.

³ Mr. Tappan discussed this subject in a note to his *Edward Randolph* (Publications of the Prince Society), iv. 138. See also *Ibid.* v. 21, 32. The former letter gives some further particulars which are of value:—

London Society,

Cambridge, 23 May, 1838.

My dear Mr. Ellis.—The problem of the date of the First and Second Writs of Quo Warranto against the Connecticut Charter is one which has been in dispute between Mr. Adams and the Committee of the Boston Historical Society, and the results from the King's Bench are now known to us all. They were, however, so far back in the memory of man that it was difficult to examine them. But I found the date of the First Writ in the *Archives* of the Nine-tenths Court at Boston, and that was the 24th of June, 1680. By examining the date of the Second Writ, I find that it was the 24th of June, 1681. This is the reason, therefore, why it is back to the last day of October.

Yours truly,

R. N. TORRAN.

Mr. Hovey,
Boston.

⁴ *Handy-Book of Dates*, 1855, Table for V. *Greg. Dates with the Christian Era.* By John S. Bassett, Fourth edition, 1855, pp. 156, 426.

*Engagement for the Colonial Library of Massachusetts
from the original in the possession of
Henry Herbert Ellis*

ANNUAL MEETING, NOVEMBER, 1898.

THE ANNUAL MEETING was held at the Algonquin Club, No. 217 Commonwealth Avenue, Boston, on Monday, 21 November, 1898, at half-past five o'clock in the afternoon, the President, EDWARD WHEELWRIGHT, in the chair.

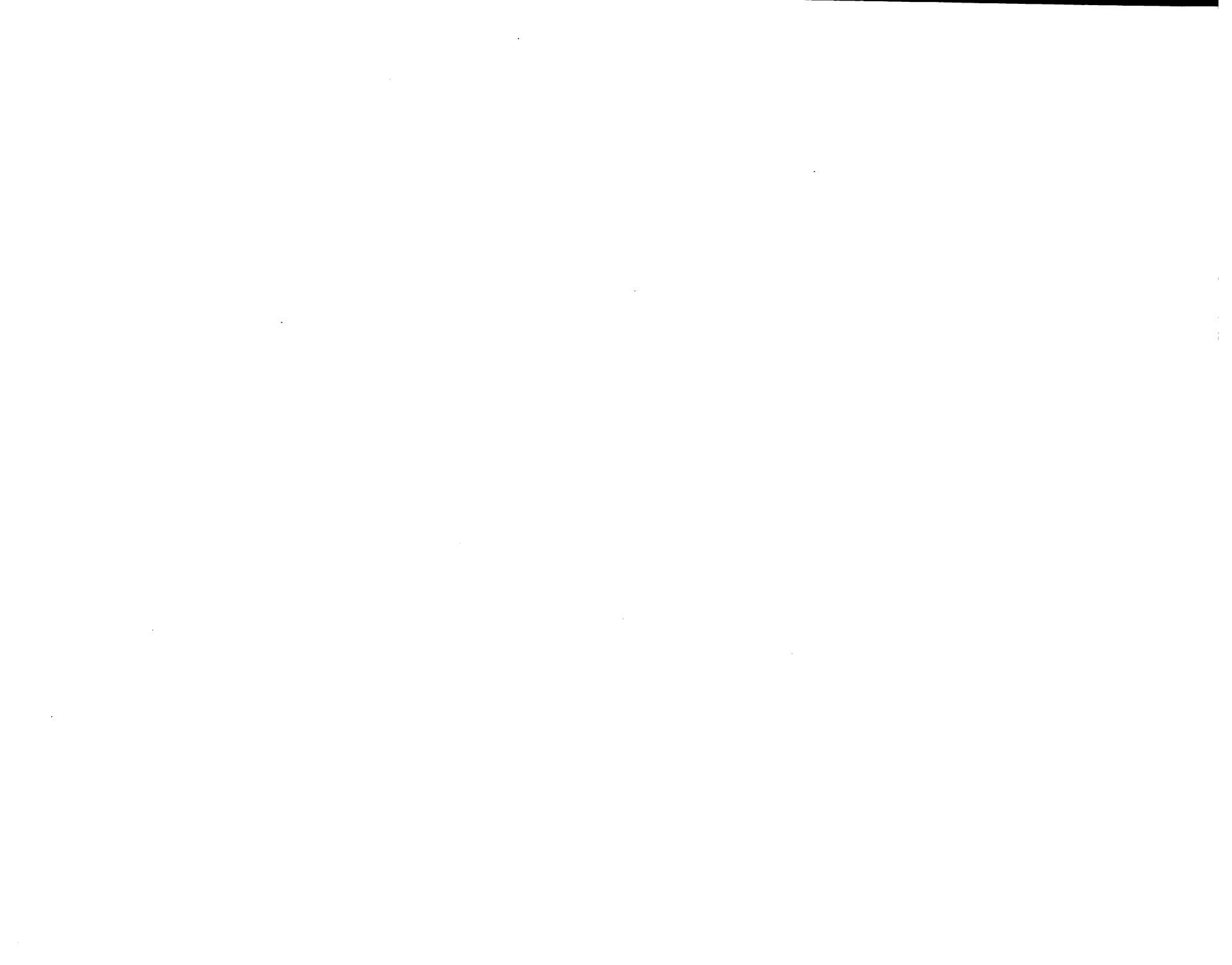
After the Minutes of the last Stated Meeting had been read and approved, the CORRESPONDING SECRETARY reported that letters had been received from Mr. JAMES BRADSTREET GREENOUGH accepting Resident Membership, and from President TUCKER of Dartmouth College, the Hon. HORACE DAVIS, Professor HERBERT BAXTER ADAMS, and Mr. WILBERFORCE EAMES, accepting Corresponding Membership.

The PRESIDENT then delivered the following Address:—

Gentlemen of The Colonial Society of Massachusetts,— I am happy to welcome you to the Sixth Annual Meeting of our Society. The Reports of the Council and of the Treasurer, which will presently be read, will give you full information of the doings of the Society during the past year, and of the state of its finances.

The year has been marked by one event of great importance,—the completion of the subscription for the Gould Memorial Fund. At the last Annual Meeting, it was announced that a large part of the amount contemplated (\$10,000) had been subscribed. We are now able to say that that amount has not only been subscribed, but actually paid into the treasury. While congratulating the Society on the success of this undertaking, the President would remind the Members that the amount thus raised falls far short of what is needed fully to equip the Society for the work it has to do. It is hoped that the Gould Fund will serve as a nucleus for the gradual accumulation of a much larger endowment to which our Members will from time to time voluntarily contribute.

Among the deaths which have occurred in the Society during the past year, two have taken place since the last Stated Meeting, namely, that of Philip Howes Sears and that of Sigourney Butler.



The pressure of routine business to-day will not allow sufficient time for the customary tributes at this Annual Meeting; but it will not be inappropriate, and it may be expected, that the President, in announcing their deaths, should give a brief sketch of these two departed members.

PHILIP HOWES SEARS was born in Brewster, Massachusetts, 30 December, 1819, and died in Boston, 1 May, 1898, in the seventy-ninth year of his age. He was thus one of the oldest of our members. He was descended, in the seventh generation, from Richard Sears, who came from England to Plymouth in 1639, and whose original homestead and a portion of the land once belonging to him in the Towns of Dennis and Brewster were still in the possession of our associate at the time of his death. Among his maternal ancestors were Governor Thomas Prence, Elder William Brewster, and Thomas Howes, one of the three original proprietors of the township of Yarmouth. He was thus of pure Old Colony stock, and a representative of the oldest families of the Cape.

Sears was fitted for College at Phillips Andover Academy, and graduated at Harvard in 1844, with the rank of second scholar in his Class, wanting only a few marks of being the first. He was also, before leaving College, elected a member of the Phi Beta Kappa. He received the degree of LL.B. in 1849, and in the same year was admitted to the Bar. He practised his profession, at first in Waltham and afterwards in Boston, until 1880, abandoning, after a few years, the trial of cases in court, and securing a less arduous and more lucrative practice as legal adviser and counsel to several corporations and trusts.

Mr. Sears was a member of the Boston City Council and of the Massachusetts House of Representatives, one of the Trustees of the Boston Public Library, and an Overseer of Harvard College. He delivered public addresses on several occasions, among them one on Classical Studies, at Andover, and an Oration at Yarmouth on the Two Hundred and Fiftieth Anniversary of the settlement of that town. He was also the author of a Report to the Overseers of Harvard College on the Study of Intellectual and Moral Philosophy, of a number of legal arguments and reviews, which have been published, and of some magazine articles.

Mr. Sears was elected a Resident Member of this Society at its

second Stated Meeting, 15 February, 1898, and, on 16 February, 1897, a Member of the Council. He was a frequent and always an interested attendant at our monthly meetings, though the delicate state of his health, especially during the last year of his life, often prevented his being present. He took part in the Memorial Meeting in honor of our late President, Dr. Gould, and paid a touching tribute to the memory of his friend and classmate, interspersed with delightful reminiscences of their College days. His last act in connection with the Society was the payment of his liberal contribution to the Gould Memorial Fund.

There were at one time seven members of the Class of 1844 who were also members of this Society, and five of them, in one capacity or another, have been numbered among its officers. Six of these have died — Gould, Hale, Parkman, Saltonstall, Sears, and Slade, and I am left the sole survivor.

My acquaintance with Sears was not very intimate while in College; but in after years I saw him more frequently, especially after he came to live in the fine old mansion on Mount Vernon Street, built by Charles Bulfinch for the residence of Harrison Gray Otis, which Mr. Sears had enlarged and embellished with a good taste worthy of the original architect. He thus became my near neighbor, and as we had many interests in common, I met him often, especially at the dinners of the Unitarian Club, from which we always went home together, talking over the matters which had been discussed.

Mr. Sears was a man of innate refinement, simple tastes, and unblemished life, with scholarly proclivities and acquirements, and fond of historical research. A careful observer and scrupulously sincere in his judgments, truly genial in disposition, though modest and retiring in manner, he was never wanting in the courtesy which marks the true gentleman.¹

¹ At a Stated Meeting of the Council held in Boston, on Monday, 7 November, 1898, the President announced the death, on the First of May, of Philip H. Sears, a member of the Council, and on motion of Mr. Noble, the following Minute, offered by the President, was adopted, unanimously, and by a rising vote: —

The Council of The Colonial Society of Massachusetts, at its first Meeting since the death of Philip Howes Sears, a Resident Member of the Society and one of the Council, desire to place on record their high appreciation of his character as a man and of his interest in the Society.

SIGOURNEY BUTLER was born in Boston, 24 October, 1857, and died in the same city, 7 June, 1898, in the forty-first year of his age. He thus belonged to the younger, as Mr. Sears did to the older, element of our Society. He was descended, in the eighth generation in the direct paternal line, from Stephen Butler, who came from England to this country in 1685. He derived his baptismal name from Mary, daughter of Anthony Sigourney, and wife of his great-grandfather, James Butler. He was prepared for college at Hopkinson's private school in Boston, and graduated at Harvard College in 1877, in the same class with his life-long friend and our late associate, Governor William Eustis Russell.

After three years' study in the Law School of Harvard University, Mr. Butler received the degree of LL.B. in 1880, and in the same year was admitted to the Bar of Suffolk County. Much of his professional work was done as counsel for the Boston and Maine Railroad,—a position involving great responsibility. From the time of his admission to the Bar until his death, he practised law in Boston, with the exception of about two years (1887-1889), when he was Second Comptroller of the Treasury of the United States by appointment of President Cleveland.

Mr. Butler was twice nominated for the position of Overseer of Harvard College,—first in 1895, when he failed to be elected, and again in 1898, shortly before his death, when the majority of votes of the Alumni favoring his candidacy was so great as to ensure his election had he lived till the next Commencement. He took a lively interest in political affairs, and for several years was Presi-

Mr. Sears was elected a Resident Member 15 February, 1893, and, on 16 February, 1897, a member of the Council to fill the vacancy caused by the elevation of one of that body to the Presidency of the Society.

He was a frequent, and always interested, attendant at our monthly meetings, though the delicate state of his health, especially in the last year of his life, often prevented him from being present during the inclement winter months. He took part in the Memorial Meeting in honor of our late President, Dr. Gould, and paid a touching tribute to the memory of his friend and classmate, interspersed with delightful reminiscences of their college days. His last act in connection with this Society, shortly before his death, was to send to the Treasurer his check for a generous subscription to the Gould Memorial Fund.

With modest and unassuming manners he had a genuine geniality of disposition and was most courteous in his social intercourse, while his clear intellect, his naturally judicious mind, and his broad culture, gave weight to his opinions. In him the Society has lost a most valuable member,—one upon whom, barring his impaired health, the highest position in its gift might have been worthily bestowed.

dent of the Young Men's Democratic Club. He never sought office for himself, but was an earnest supporter of those who, like our late associates, John Forrester Andrew and William Eustis Russell, were striving to lift politics from the low level of party zeal to the higher plane of true statesmanship.

Butler was a good citizen, a pure patriot, a devoted son and brother, and had withal an "indescribable element in his character and in his manner which made him a delightful companion to all sorts and kinds of men." Possessed of gifts and accomplishments which made him a welcome guest on all social occasions, he could tell a good story and sing a good song, preserving always his native refinement. "There lay beneath the charming exterior of his manner," says his Class Secretary, "as the cornerstone of his character, the soul of honor and the highest of ideals."¹

His friend and classmate, Mr. Lindsay Swift, has been designated by the Council to write Mr. Butler's Memoir for the Society's Transactions.

THE Annual Report of the Council was presented and read by the CORRESPONDING SECRETARY.

REPORT OF THE COUNCIL.

By a provision of the By-Laws it is made one of the duties of the Council to "make an Annual Report which shall include a detailed statement of the doings of the Society during the preceding year." In accordance with this requirement the Council now submits its Annual Report. This term "doings" is somewhat flexible. It may include not only actual events, but their causes and consequences; it may have reference not to the past and present merely, but also to the future; it may contain narration and suggestion; it may be part history and part prophecy. The Council proposes, however, in its present Report, to confine itself largely to a résumé of the results of the past year and of the standing of the Society to-day.

The strength of any organization, whatever its nature, lies largely in its finances and their administration. It will be seen from the Treasurer's Report that there has been an increase of ten thousand

¹ John Ford Tyler, in the Harvard Graduates' Magazine for September, 1898, vii. 127.

dollars in the Permanent Funds of the Society, all of which are safely invested in first mortgages on improved real estate in Boston and Cambridge, yielding five per cent, the principal and interest of which are payable in gold coin. In the first Report of the Council, in 1893, attention was called to the necessity of a Permanent Fund for defraying the cost of the Publications of the Society. However generously contributions came in from members, without solicitation, to meet special exigencies, and to whatever extent hopes and expectations were more than realized, something further was requisite to permanent and assured success.

One of the most important events of the past year has been the completion of The Gould Memorial Fund. At the Annual Meeting in 1896, it was voted that a Committee of five persons be appointed —

"with full powers to consider the subject of increasing the Permanent Funds of the Society, whereby provision may be made for an annual income sufficient to defray the cost of the Society's Publications, and to take such further action as they may deem expedient."

This Committee had been decided upon by Dr. Gould, but he died before he had announced his choice. To the names selected by him two were subsequently added, making it a Committee of seven, as follows: —

EDWARD WHEELWRIGHT,
SAMUEL JOHNSON,
DAVID R. WHITNEY,
CHARLES F. CHOATE,
ROBERT N. TOPPAN,
NATHANIEL C. NASH,
HENRY H. EDEA.

This Committee made its final report at the April Meeting of this year. Ten thousand dollars, contributed by seventy-three persons, has been paid into the treasury, and safely invested, as already stated. This Fund has been named in honor of the late President of the Society.

A significant and encouraging fact connected with the success of this undertaking is, that the Fund was not the sole gift of a few wealthy men, — though the Society gratefully acknowledges not a few large contributions, — but, in the main, was the gift of a

large proportion of our Resident Members, — a striking testimony to the general interest felt by our fellowship in the welfare of the organization.

The importance of this acquisition can scarcely be overestimated. First and foremost, it establishes beyond peradventure the permanence of the Society. This at least is assured. But it may well have another and further value and importance and significance. It reveals wherein the Society needs strengthening; what prospects of usefulness are opened, and what results may be attained; how this organization may establish beyond question its right to existence; how it may supply a much needed want in the community; what it can accomplish, not for the present merely, but for posterity; and how it can make itself a power in the advancement of historical learning, of sociological inquiry, of the study of jurisprudence, and in all those manifold fields where the past must supply the material on which the present is to work for the development of the future.

In the success of this movement lies a pregnant suggestion: what more permanent Memorial of any member who has closed his career of active, personal usefulness, is left to his friends to establish, or what more lasting remembrance can any living member leave behind him, than the creation of a similar Fund for similar or analogous purposes, or how can he better assure himself of an ever-increasing and widening influence which shall outlive him?

A few changes have been made in the By-Laws, — most of them for the purpose of securing greater clearness and precision. One important change has been made in the creation of a limited Roll of Corresponding Members. Eight gentlemen have since been elected as such: —

JOSEPH WILLIAMSON,
JOHN FRANKLIN JAMESON,
SIMEON EBEN BALDWIN,
EDWARD SINGLETON HOLDEN,
HERBERT BAXTER ADAMS,
HORACE DAVIS,
WILBERFORCE EAMES,
WILLIAM JEWETT TUCKER.

Two names have been added to the List of Honorary Members: —

JAMES COOLIDGE CARTER,
SIMON NEWCOMB.

Five Resident Members have been elected:—

JEREMIAH SMITH,
JOHN ELIOT THAYER,
AUGUSTUS LOWELL,
DENISON ROGERS SLADE,
JAMES BRADSTREET GREENOUGH.

While no such startling inroad has been made upon our ranks as occurred in the year preceding, we have to regret the loss of four most valued and accomplished members. It seems unnecessary to add anything here to the delicate and tender tributes which have been paid to their memories, or to the just and discriminating characterization of their qualities which have already been placed upon our Records. The mention of their names—

FRANCIS VERGNIER BALCH,
JOSEPH HENRY ALLEN,
PHILIP HOWES SEARS,
SCOTTNEY BUTLER —

is enough to show the loss which the Society has suffered in their death,—the able, learned lawyer, with his unique personality, which words fail to portray, universally loved and admired; the man of letters, of wide and varied learning, of remarkable intellectual keenness and strength, joined with the most winning qualities and exalted character, in the fulness of years and wisdom; the conservative, judicious, and wise lawyer and man of affairs; and one in the early prime of manhood, full of promise and expectancy, whose brilliant success was but a foreshadowing of what the future would bring, but who had lived long enough to gain the affection of all with whom he had been brought in contact.

The six Stated Meetings of the Society, held monthly, as usual, from November to April, inclusive, have been well attended. In any organization, composed largely, as this is, of exceptionally busy men, a full and constant attendance is, of course, impossible, and presence is not always the sole measure of actual interest. When it is considered, however, how much inspiration there is in numbers, when men are engaged in a work of common interest, and how largely such a manifestation of interest conduces to success, it seems desirable to adopt all proper measures to secure as full an attendance, steadily and regularly, as may be possible.

Leisure, opportunity, interest, time, money, are not uniform or universal possessions; but if these are singly utilized and applied, so far as circumstances allow and inclination prompts, the interests and prosperity of any organization will be immeasurably promoted, and its success insured. There is room for all to work, each in his chosen way, and to each the Society is a debtor.

At the Meetings, a wide range of subjects has been presented, which have usually opened up numerous collateral and kindred matters, and given rise to interesting and profitable discussion.

Among the original manuscripts and other valuable materials which have been exhibited or communicated during the year are: (i) the original charter of the Harvard Chapter of the Fraternity of Phi Beta Kappa, restored to it many years after its supposed loss; (ii) letters of Cotton Mather, John Singleton Copley, Elizabeth Montagu, General Knox, Martha Washington, and a love letter of General Washington; (iii) a Mezzotint of Smybert's portrait of Sir William Pepperrell; (iv) a copy of a Royal Commission to the Bishop of London authorizing his exercise of certain Episcopal functions in America, and the original Commission of General Joseph Dwight as Judge of the Court of Admiralty at Louisburg in 1745; (v) the original third Writ of Quo Warranto against the Connecticut Charter, and an original search-warrant for the apprehension of the regicides Goffe and Whalley; (vi) an original Thanksgiving Proclamation, in 1681, of John Davis, Deputy President of the Province of Maine; (vii) a manuscript sermon of Cotton Mather; (viii) a copy of General Washington's Military Record, giving Muster Rolls, in 1778, in three Massachusetts counties; (ix) an original manuscript purporting to be the List of Theses of the Commencements at Harvard College in 1663, and a copy, believed to be unique, of Israel Chauncey's Almanac for the same year; besides a number of original documents connected with events of the American Revolution.

The papers and communications read at the successive Meetings were many and varied, and of much interest. They include (i) an article relating to the Records and Files of our highest Court,—their history and places of deposit; (ii) an account of the visit of Lieutenant-General George Digby Barker, a grandson of a British officer in action at Lexington, Concord, and Bunker Hill, to the old battle fields and other scenes, and of the Diary of his Grand-

father covering that period; (iii) a summary of the sentiments and attitude of some of the leading patriots of the Revolution concerning noted events of that struggle, illustrated by a letter of Dr. Franklin upon the Tea Party, and other papers; (iv) the trial of the British soldiers implicated in the affair of the Fifth of March, 1770; (v) two papers upon the Land Banks; (vi) an account of Henry Pelham, Copley's half-brother, founded on contemporaneous letters and documents; (vii) a discussion of the Third volume of the Massachusetts Colony Records, based upon an original Fragment of a Record by Secretary Rawson; (viii) the Connecticut Charter and the Story of the Charter Oak; (ix) a paper upon the use of the terms "Hired Man" and "Help," with exhaustive illustrations; (x) an account of some Massachusetts Tories; (xi) a discussion of the original manuscript List of Theses already referred to, — valuable if a veritable programme, or, if a student's burlesque, a unique production of no less consequence and interest. Besides these more formal papers, numerous briefer matters were brought up and considered from time to time.

During the year a Memoir of Darwin Erastus Ware was communicated by Professor James Bradley Thayer, and a Memoir of William Eustis Russell by Dr. Charles Carroll Everett.

The issue of our Publications has been delayed by unavoidable circumstances, among them the non-arrival from England of copies of important documents, and the non-completion of certain portrait illustrations. Volume III., devoted to our Transactions, and a serial part or parts of Volume V., of similar character, will very soon be issued. Volume IV., in accordance with the plan adopted by the Council, is reserved for miscellaneous Collections, and will include Mr. Davis's valuable Calendar of Land Bank Papers in the Massachusetts Archives and the Suffolk Court Files, besides Mr. Griffin's copy of Massachusetts Muster Rolls, in 1778, from Washington's Military Record, already mentioned.

In accordance with our practice of keeping track of the various Historical Associations which the growing interest in historical pursuits has called into existence, the organization or incorporation of such bodies has been reported from time to time as they have come to our knowledge, in order that our volumes may contain a full and complete List of these Societies, which may be easily referred to by means of our Indexes.

A great public service has been done by many cities and towns in printing their early records. What has been accomplished by the City of Boston is well known; and to the intelligent interest, the foresight, and the wise liberality of the County of Suffolk is due a work securing the preservation of a large amount of historical material, — the value and importance of which can scarcely be exaggerated, — now, for the first time, and by this means, about to be made available to students of our history and jurisprudence. Cambridge has made a most significant beginning in the publication of the Proprietors' Records of that ancient municipality, and has now in press, under the supervision of Edward J. Brandon, Esq., City Clerk, the Early Town Proceedings. It is to be hoped that the publication of the Vital Statistics, at least to 1850, is contemplated in the scheme of the authorities of the University City.

The importance of printing the early records of our older towns and cities, — and especially the Vital Statistics, — cannot be too strongly urged. By such a course these Archives are not only made accessible to the ever-increasing number of interested students, scattered all over the United States, who trace their lineage to New England, but they are put beyond the danger of destruction, not merely by fire and flood, but by the constant handling of a multitude of inquirers.

A work which peculiarly deserves attention, and which it is hoped may be undertaken at no distant day, under proper conditions, is the printing of the early Records of Harvard College. What wealth of historical material and what matters of importance and value in manifold directions are therein contained, is revealed in the communication of Mr. William Garrott Brown to the Harvard Graduates' Magazine for March, 1898, upon the University Archives. This Society would gladly undertake the work if some liberal and interested alumnus of Harvard would guarantee the printer's bill.

Attention has been called in previous Reports of the Council to one matter of especial importance, and a work which cannot be entered upon too soon, — the printing of the Records of the ancient Churches of the Commonwealth. These priceless volumes contain data of incalculable value to the historian and genealogist which are nowhere else preserved. The time is ripe, and concerted action is desirable. The custody, care, and preservation of the Vital

Statistics of Towns, to a certain extent, can be controlled by legislation, but the Records of Churches, being the property of private corporations, cannot. Here, then, is an opportunity for this Society. Every effort should be made to encourage the Churches to print their Records, and no opportunity should be lost by us to co-operate in such undertakings. Individual research is not always possible, neither is it the only or the best way of accomplishing results, nor always the most effective. With ample funds than it now possesses, a service of incalculable value might be done in this direction by this Society.

During the past year the Society has again been indebted to the American Academy of Arts and Sciences for a renewal of its generous hospitality in affording the use of its Hall for our Stated Meetings; and a vote of the Council, expressing its sense of the obligation thus incurred, and its thanks for the continued courtesy, has been transmitted to the Academy.

The Treasurer submitted his Annual Report, as follows:—

REPORT OF THE TREASURER.

The first Article of Chapter VIII. of the By Laws requires of the Treasurer that at the Annual Meeting he shall make a written or printed Report of all his official doings for the year preceding, of the amount and condition of all the property of the Society intrusted to him, and of the character of the investments. In compliance therewith the following abstract of the Accounts, and a Trial Balance of the books on 17 November, 1898, are now submitted:—

CASH ACCOUNT.

	RECEIPTS.
Balance, 15 November, 1897	\$300.35
Admission Fees	850.00
Annual Assessments	790.00
Voluntary contribution towards the cost of the Society's Publications	2,469.79
Interest	472.52
Sales of the Society's Publications	8.40
Miscellaneous items	10.00
Subscriptions to The Gould Memorial Fund	10,000.00
Withdrawn from Charlestown Five Cents Savings Bank	344.29
Mortgages sold or discharged	<u>5,650.00</u> <u>18,794.80</u>
	<u>\$20,068.15</u>

1898.]

REPORT OF THE TREASURER.

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EXPENDITURES AND INVESTMENT.

University Press, Printing	\$2,542.62
John H. Daniels, Steel Plate Printing	2.50
Hooper, Lewis and Company, Stationery	10.12
William H. Hart, Auditing	5.00
Elizabeth H. Connally, work on the Instructions of the Royal Governors	90.00
Clerical Service	64.15
Miscellaneous incidentals	828.86
Deposited in Charlestown Five Cents Savings Bank	1,122.82
Mortgages on improved Real Estate @ 5%, principal and interest payable in gold coin	15,850.00
Interest in adjustment of mortgages bought, record fees, etc.	<u>126.79</u> <u>18,644.25</u>
Balance on deposit in Third National Bank of Boston, 17 November, 1898	<u>420.90</u> <u>\$20,068.15</u>

The Funds of the Society are invested as follows:—

\$12,200.00 in First Mortgages on improved property in Boston and Cambridge,
\$48.85 deposited in the Charlestown Five Cents Savings Bank.

TRIAL BALANCE.

	DEBITS.
Cash	\$438.90
Mortgages	\$12,200.00
Charlestown Five Cents Savings Bank	<u>\$48.85</u> <u>12,048.85</u>
	<u>\$12,487.75</u>
	CREDITS.
Income	\$438.90
Publication Fund	\$582.74
General Fund	2,516.11
The Gould Memorial Fund	<u>10,000.00</u> <u>12,048.85</u>
	<u>\$12,487.75</u>

It thus appears, that all audited claims against the Society have been paid; that there is sufficient Cash on hand to discharge all liabilities incurred for which bills have not as yet been rendered; and that the Society is possessed of Permanent Funds to the amount of Thirteen Thousand Dollars.

HENRY H. EDWARDS,
Treasurer.

Boston, 31 November, 1898.

The Committee, consisting of Messrs. MOSES WILLIAMS and GEORGE WIGGLESWORTH, appointed to examine the Accounts of the Treasurer for the year ending 17 November, 1898, reported, through Mr. WIGGLESWORTH, that the Accounts had been accurately kept and were properly vouched, that the Cash Balance had been verified, and that the evidences of the Investments had been examined.

The several Reports were accepted and referred to the Committee of Publication.

Mr. SAMUEL JOHNSON, on behalf of the Committee to nominate Officers for the ensuing year, presented the following List of Candidates; and, a ballot being taken, these gentlemen were unanimously elected:—

PRESIDENT.

EDWARD WHEELWRIGHT.

VICE-PRESIDENTS.

WILLIAM WATSON GOODWIN.

JAMES BRADLEY THAYER.

RECORDED SECRETARY.

HENRY WINCHESTER CUNNINGHAM.

CORRESPONDING SECRETARY.

JOHN NOBLE.

TREASURER.

HENRY HERBERT EDES.

REGISTRAR.

HENRY ERNEST WOODS.

MEMBER OF THE COUNCIL FOR THREE YEARS.

ROBERT NOXON TOPPAN.

Mr. JOHN NOBLE read a letter from Professor Albert Bushnell Hart, respecting the next Annual Meeting of the American Historical Association; whereupon, on motion of Mr. ANDREW MCFARLAND DAVIS, it was—

Voted, That The Colonial Society of Massachusetts extends a cordial invitation to the American Historical Association to hold its Annual Meeting next after that of 1898 in Boston and Cambridge, Massachusetts.

Mr. S. LOTHROP THORNDIKE, on behalf of the Honorable JOSEPH H. CHOATE, who was unable to be present, communicated a Memoir of Leverett Saltonstall which he had been appointed to prepare for publication in the Transactions.

After the Meeting had been dissolved, the Annual Dinner was served. Mr. WHEELWRIGHT presided, and the Rev. Dr. CHARLES CARROLL EVERETT invoked the Divine Blessing. On rising to begin the after-dinner speaking, President WHEELWRIGHT said:—

The Council of the Society, moved by that family affection which we all feel towards our elder sister, the Massachusetts Historical Society, voted, at a recent meeting, that three distinguished members of that Society should be invited to partake with us of our Annual Dinner. The three gentlemen designated were accordingly invited to honor us with their presence this evening. They were the President of the Society, Mr. Charles Francis Adams, Professor Henry W. Haynes, its Corresponding Secretary, and Mr. Robert C. Winthrop, Jr. Mr. Adams at once accepted our invitation and is here to-night. Messrs. Haynes and Winthrop felt reluctantly compelled to decline,—both, I regret to say, on the ground of ill health and physical infirmities. Before presenting Mr. Adams, who needs no introduction to any gathering of sons of Massachusetts, I wish to offer a sentiment or toast:—

Our elder sister,—the Massachusetts Historical Society. Pioneer in the field of historical research, she has nobly fulfilled her mission during her century of life, and has set an example of scholarship and thoroughness of research which deserves and commands our respect and our emulation. We offer her our congratulations upon her ever widening field of usefulness and upon her abundant resources,—historical and material.

The toast was drunk standing, and was responded to by Mr. Adams, who paid an eloquent tribute to the memory of Dr. Benjamin Apthorp Gould and to that of the Hon. Darwin E Ware. Mr. Adams then proceeded to point out a sphere of labor to which this Society seems to be called by its very title of "Colonial," in rescuing from oblivion and threatened destruction important documents relating to our Colonial history, and closed his Remarks by making an eloquent plea for the liberal endowment of this Society, which, he said, was essential to the attainment of the best results in carrying on its work.

Mr. HENRY H. EDES then said: —

A year ago to-night Mr. Rackemann gave us all pleasure by proposing the health of our honored President, thereby affording us an opportunity to testify our personal respect, and our loyalty to him and to his administration. I am sure, gentlemen, that we shall all rejoice to renew, to-night, those pledges of loyalty and respect,—aye, Sir, of affection—and to add to them an expression of our cordial appreciation of Mr. Wheelwright's constant and untiring devotion to every interest of the Society.

Gentlemen, I give you the health of President Wheelwright.

The toast was drunk standing, after which speeches were made by the PRESIDENT, Mr. WILLIAM WATSON GOODWIN, Bishop LAWRENCE, who paid a tribute to the memory of Sigourney Butler and spoke of the importance of preserving and printing the Records of our older Churches, Mr. SAMUEL JOHNSON, who referred to the Prince Library and its history, Mr. ANDREW McFARLAND DAVIS, who spoke of Mr. Goodell's eminent services in elucidating the history of our Provincial legislation, Mr. SAMUEL SWETT GREEN, and Mr. JAMES BRADSTREET GREENOUGH.

Mr. JOHN NOBLE proposed the health of Mr. Abner C. Goodell, who was detained at his home in Salem by illness; and it was drunk standing.

The PRESIDENT said that letters of regret had been received from Sir John G. Bourinot, and from three of our Honorary Members, — the Hon. EDWARD J. PHELPS, the Hon. JAMES C. CARTER, and the Hon. JOSEPH H. CHOATE, all of whom were prevented by professional engagements from being present.

MEMOIR
OF THE
HON. LEVERETT SALTONSTALL, A.M.
BY
JOSEPH HODGES CHOATE.

IT is with no little diffidence that I undertake the duty assigned me by The Colonial Society of Massachusetts to write something about our late associate Leverett Saltonstall which shall be worthy of record in its annals, because my close acquaintance with him was limited to a single year in our early lives, and for forty years afterwards our meetings were occasional, although our mutual interest never failed. It was, indeed, a great loss to the Society when the Hon. John Lowell, who, with the loving hand of a life-long neighbor and intimate friend, had entered upon the performance of this duty, was himself removed from us by death.

Mr. Saltonstall was one of the Founders of The Colonial Society of Massachusetts. At its meeting for organization he was elected one of its Vice-Presidents, but he served in this office for one year only, declining a renomination, in 1898, on the score of ill health. At the request of the Society, he prepared the Memoir of the Hon. Frederick Lothrop Ames which is contained in the first volume of its Publications.

The famous saying of Dr. Holmes, in response to the inquiries of an anxious mother, that a child's education should begin at least a hundred years before he was born, was exemplified with double force in the case of Mr. Saltonstall. His education, the formation of his character, the motive power of his life began more than two hundred years before his birth at Salem on the sixteenth of March, 1825. More signally than any other man whom I have known he was actuated and inspired in his life and conduct by a just and honorable pride of ancestry, which went far to color his

thoughts and control his actions both in public and in private life, and always to high and honorable ends.

It was my good fortune to be present at the celebration, in Salem, of the two hundred and fiftieth anniversary of the landing of Governor Endicott,—at a scene and in a company which Dean Stanley, who was one of the guests, declared could not be found in any town in England with her thousand years of history. There was the orator of the day, our beloved and honored associate Judge Endicott, the worthy representative in blood, features, and character of the first Colonial Governor—that stalwart hero who had ever the courage of his Puritan convictions and ruled the little Colony with the sword in one hand and the Bible in the other. On his right sat Robert C. Winthrop, and on his left Saltonstall, tracing their descent to the two pioneers of the great Puritan immigration to the old Bay State,—fellow passengers in the *Arbella* which followed Endicott only a year later,—and who were the leading spirits in the transfer of the Charter to American soil and in laying the foundation of the Commonwealth which was to become, at the close of two centuries, the foremost community not of America only but of the world, in education, intelligence, and character, first in all that goes to make up the physical and moral well-being of the race; while gathered about them were the lineal descendants of four of the leading men in the immigration that preceded Endicott who bore their names and had occupied their places in Salem for eight generations.

Saltonstall could trace his pure English blood, mixed with no foreign strain, not merely to Sir Richard Saltonstall, but, in the widely diverging ascending line, to the Cookes, the Wards, and the Phillipses, to Governor John Leverett, and to many other worthy men of power and dignity in the State who, in succeeding generations, had each, according to his measure, helped to make New England what she was and is, and it is no wonder that he delighted to study their lives, to recall their virtues, and, in life and conduct, to be worthy of his distinguished lineage; and so with him a lofty public spirit, a high and delicate sense of honor, the will to live up to his light wherever it might lead him,—whether we regard them as faculties acquired directly by transmission or studied and imitated for the love he bore to his ancestors,—were necessary and constant traits.

His father, whose name he bore, was conspicuous in Salem and throughout the Commonwealth, not merely as an able lawyer and a wise and patriotic Mayor, legislator, and Congressman, but also, and more than for all his other great virtues, for a warmth and largeness of heart, which went out in all its fulness to those with whom he had to do in every relation of life. I well remember that when he died, in Salem, in 1845, the saying went about among the people who had looked up to him as their leading fellow citizen that Leverett Saltonstall had a heart as big as an ox.

Thus descended and sired, it will not be strange if we find this fortunate child of the Commonwealth a man of unsullied virtue, of large patriotism, ambitious to serve his State and his country, according to the ideals of the past, carrying his head high among his fellows, sensitive in a high degree of his own honor, a lover of truth and justice and ardently loyal to his kindred, his friends, and associates; and such in truth he was.

I will not enter upon the vexed question whether heredity or environment has the greater influence upon the formation of a man's tendencies and character; but assuming that both are largely responsible, we may note with interest his surroundings from infancy to manhood, and if we find that he was bred as well as he was born, as truly as the boy is father of the man, we shall expect the outcome of a lofty and commanding character.

Salem, his native place and his constant residence from 1825, the date of his birth, until 1844, when he graduated at Harvard, was a peculiar and interesting community, and boyhood spent there left strong and indelible marks upon many of her sons. Its inhabitants were of absolutely pure and unmixed English breed, and chiefly of that sturdy Puritan stock which began with the coming of Endicott and Winthrop, of Saltonstall and Higginson, and continued until the outbreak of civil war in England, and settled along the shores and over the farms of Essex County. Salem had been for two centuries the principal and only considerable town in the County, and hither the most energetic and ambitious of the youth of the County migrated as to the nearest Capital, as Joseph Peabody came from Topfield, Saltonstall's father from Haverhill, and Rufus Choate from Chebacco. A foreigner was hardly ever seen within the town limits. The days

of her commercial supremacy were past. Commerce itself, spreading its sails on larger ships, had already almost abandoned her shallow harbor; but her enterprising merchants and her hardy navigators had, for almost a century, been exploring the confines of the globe, extending commerce into regions unknown before, and bringing home the spoils of the Indies and of Africa to lay them down at her door. Though Salem ships no longer ploughed the seas as of old, a large share of the wealth that resulted from all this enterprise and adventure still remained in the town, and Saltonstall's ancestors in the maternal line had been among her leading merchants. The whole tone and spirit of the place was still commercial. Her people were justly proud of her history and traditions. Culture and education had grown up to a high standard with the transmitted wealth which was still enjoyed by her chief citizens who constituted a society which was, at least, equal in all that elevates and graces civilized life to that of any city in America. In these respects her resources were quite sufficient for herself in those days when communication with other cities was difficult, and travel abroad was an almost unknown luxury. In 1837, we went out to Castle Hill with our parents to see the first railroad train come in from Boston.

Manufactures had not yet been thought of, and business having departed the chief industry of the place was education. There were probably more resident Harvard graduates among her citizens in proportion to the population, than in any other city in the country, and among them many of great eminence. The great depths of orthodoxy had been broken up, and the wonderful and far-reaching influence of Dr. Chauncy had permeated the religious thought of Massachusetts, and nowhere more thoroughly than in Salem, where the great majority of the educated people had adopted the Unitarian faith. It is to Harvard that this mitigation of the terrors of old beliefs is largely due, and it constitutes one of the greatest services she has ever rendered, which may well be acknowledged now that she has thrown off even the weak trammels of that mild denomination, and opened her doors with absolute freedom and equality to all creeds and all sources of light and knowledge.

It is to this same period also that we trace the beginning of the mighty influence of Horace Mann in arousing the public mind

to the importance of more thorough system in the conduct of education in our public schools. His appointment as Secretary of the newly-appointed Board of Education to revise and re-organize the common school system of the State was warmly welcomed by the elder Saltonstall, who was, about this time, elected the first Mayor of Salem, and, in that capacity, took a lively and special interest in her schools. "Rarely have great abilities, unselfish devotion, and brilliant success been so united in a single life" as in this great educational work of Mr. Mann. In such an intellectual community as that of Salem his labors had magical and electric effects; and fortunate were the youth of this epoch who profited by them.

There was another all-pervading influence which operated with peculiar effect upon the youth of this ancient town, and upon none more vividly than upon those who, like the subject of this Memoir, could look back upon a line of ancestors whose lives, in successive generations, were prominently identified with the public life and history of the Colony and the State. Their minds were saturated with the local traditions which Hawthorne was then illustrating by the inimitable charm of his writings; and a passion for local history and illustration — soon afterwards resulting in the foundation of the Essex Institute, which has contributed such valuable results — was everywhere prevalent. To-day every intelligent boy in America takes up the newspaper and makes a morning tour of the globe, learning before breakfast all that is going on "from China to Peru;" but it was not so in the days of which we are speaking. Steam had hardly begun to tell, the telegraph was hardly yet dreamt of, and the telephone, if suggested to the imagination, would have been set down with Salem Witchcraft as an invention of his Satanic Majesty. The semi-weekly Register and Gazette gave us chiefly local news, telling of the events of Boston two days before, of New York a week before, and discussing what had happened in Europe in the previous month. The North American Review was about the only monthly periodical. Thus our attention was concentrated upon home life and home rule, and the past history and current events of Salem and of Essex County were of absorbing importance.

We had our local aristocracy — very marked and commanding and exclusive — in those days, which was naturally led by the

Saltonstalls and the Endicotts. Its social life was, for the time, luxurious and splendid; its hospitality unbounded and marked by the charms and graces of wealth and cultivation. Federalism, too, gave the prevailing political tone to the leading members of this wealthy society. The Essex Junto — to which their commercial ancestors had been committed, and which was "the personification of the desire of the local commercial interests for a stronger Federal Union," led by such men as the Lowells, George Cabot, Theophilus Parsons, Stephen Higginson, and Benjamin Goodhue — had transmitted its extreme Federal ideas to a posterity, which was still keenly alive to the importance of commerce, and to the maintenance of a powerful mercantile marine, as vital to the national prosperity; and the birth of the Whig party, as the natural heir of Federal traditions and doctrines, found here many stalwart champions. The Essex Bar was still powerful by the talents and the number of its leading representatives, of whom Saltonstall's father was among the foremost.

Reared in such a community, amid such surroundings, and breathing such a social and intellectual atmosphere, we should expect a youth who enjoyed its best influences and associations to give promise of a cultivated, high-toned, and patriotic gentleman.

The Salem Latin School, in which he was prepared for college, was a unique institution. It was maintained by the Town and afterwards by the City at the public expense for the sole purpose of qualifying boys for college, and almost exclusively for Harvard. For generations it sent forth annually to that Mother of Learning a little group of boys who had figured well in the classes to which they were admitted. It had come down under varying names from the early days of the Colony, and was, or had the credit of being, the first Public School established in Massachusetts, even antedating the foundation of Harvard College. "*Schola publica prima*" was inscribed upon the wall opposite the master's desk; and the name of George Downing, the second member of the Harvard Class of 1642, and who enjoys, in the Quinquennial Catalogue, these honors — "Knight 1660, Baronet 1663; Ambassador to Netherlands from Cromwell and Charles II.; M. P.," was also there emblazoned as "the first pupil," as a historical incentive to our ambition. In the two centuries that followed, the School may have turned out many a worse scholar, but never a more notorious

turn-coat, than Downing. Oliver Carlton, a rigid disciplinarian, but a most thorough and faithful teacher, was the Master and the sole instructor in Saltonstall's time. A single room and a lobby for disciplinary purposes sufficed for all the needs of the School. Here we recited, studied, and suffered. He taught but three things, Latin, Greek, and Mathematics, but he taught them well, and what was not absorbed voluntarily was pounded in. In serious cases of delinquency he spared not the rod,—the real, old-fashioned thing. He was no respecter of persons. His monogram, O. K. O. K. O. K.,—"an awful cut from Oliver Carlton's awful cowhide,"—was tattooed with equal fidelity upon the aristocratic cuticle of a Saltonstall or an Endicott as upon the hide of more democratic members. His avenging wrath fell upon culprits without the least regard to the homes from which they came, or to the wealth or poverty ruling there. It was impartial as death itself:

— "aque pulsat pede pauperum tabernas
Regumque turres."

One of Saltonstall's most graceful acts was his appreciative Memoir of this faithful, and always honored and beloved, teacher. In 1840, he entered the Freshman class of Harvard well prepared. No Saltonstall in the nineteenth century could think for a moment of entering any College but Harvard. There his father had graduated, in 1802, and each of his ancestors in five successive generations, beginning with Nathaniel, in 1659, was enrolled among the Alumni. Henry, a son of Sir Richard, was in the first class, of 1642, and others of the name among his collateral kindred were Harvard's sons. An intense filial love of the College, as his true intellectual mother, inspired him from the day he entered as a Freshman until fifty-four years after when, in Memorial Hall, on Commencement Day, he spoke for the lingering remnant of his Class, and in words of deep feeling, which touched the hearts of all hearers, he glorified the record of his classmate, and at the same time testified the grateful recognition by the Alumni of the matchless services of President Eliot who, on the same day, celebrated the Twenty-fifth anniversary of his remarkable Presidency; and it was with no little pride that he boasted that all his sons had added their names to the illustrious roll of graduates.

The period of his college life, which was bringing rapidly to its close the long and honorable presidency of Josiah Quincy, is fondly looked back upon by the elders among our surviving graduates as the halcyon epoch of its history. No very material change in the curriculum had been introduced since his father's graduation forty-two years before. The size of the classes had not substantially increased above the old average of about sixty members, so that all of a class were necessarily intimate acquaintances, friends for life, brethren by a close tie. The College Faculty, small in numbers, teaching a few things well to all alike, were known through and through by all the students and honored or criticised, applauded or ridiculed, according to their merits. It was still Harvard College only, and the idea of the University had not been conceived.

In view of the varied and multiplied necessities of modern life, the superiority of the new system, as a means of general education for the average of the vast throng of pupils that now crowd her portals, will hardly be disputed by anybody; but as the prestige of any seat of learning must depend, not so much on the number of her graduates, as upon the number and character of great men among her teachers, and especially among her Alumni, it will take another generation yet to determine, whether, for the production of these,—the true jewels in her crown,—the new system surpasses the old in efficiency and strength. Certainly, it will be well for Harvard if she shall develop in her graduates of the present half-century, even with their enlarged numbers, men who, for the honor of the College and the service of the community, shall excel Story, Shaw, Channing, Everett, Prescott, Bancroft, Emerson, Adams, Winthrop, Pierce, Holmes, Motley, Hoar, and Lowell. The discipline and the *genius loci* which produced such a list of worthies cannot be despised.

Judged by the same standard, the Class of 1844 was a great and famous class. Out of a total of sixty-two members it produced four men who have procured, each for himself, a niche in the Temple of Fame. Dr. John Call Dalton and Professor Benjamin Apthorp Gould, by their contributions to Science, and William Morris Hunt in Art, and Francis Parkman in Historical Literature, bear telling testimony for the nurture of which they were the fruit. Saltonstall's record and standing in college were highly

honorable, though we cannot picture him ever as a very hard student. In the social life of the College, which then, even more than now, was a conspicuous factor in moulding and developing personal character, he must have been always a prominent figure, and have exercised a wholesome influence in the direction of all that was true and pure and lovely and of good report. It was here, especially, that his commanding figure, his courtly presence, his cordial greeting, and his loving sympathy would tell and bear fruit.

Six years intervened between his graduation and his admission to the Bar in Boston, but half of these were spent in foreign travel which enriched his mind with varied stores of reminiscences, and made his company and conversation in after life so animating and delightful.

It was my good fortune, after completing the usual course at the Law School, to spend a year as a student in his office, and I have always recurred to that brief period of association with him with great interest and satisfaction. He was then very young in the profession, but he had already acquired a considerable practice, was particularly fond of Court business, and threw himself into what came to him with great energy and ardor, although he had not yet mastered, what some of us never master, — a certain stage fright, which almost universally overwhelms the young practitioner in Court. His highly-strung, nervous temperament rendered him peculiarly susceptible to this forensic malady. A posing question from Chief Justice Shaw, always a terror to tyros, or a hostile manifestation in the jury box, would send him back to his office at the adjournment of Court, in a state of excitement which, for the time being, was a great strain upon his nerves. But this, it will be remembered, was at the outset of his career and was very transient. His self-command soon asserted itself, and he had the faculties and the qualities which would have surely led him, had he persevered, to a leading place at the Bar and especially among Jury lawyers. Common-sense is the great faculty for dealing with jurors, and of this pre-requisite he had a full supply; and then he was a first-rate speaker, and his commanding figure and genial presence, and his unwavering fidelity to what was just and fair and honest, would have done the rest. Juries dearly love fair play, and no man in Court or out ever played fairer than Salton-

stall. There is one incentive that he lacked, without which, I believe, very few men in the world's history — you can count them all upon your fingers — ever attained to real and lasting eminence at the Bar. I mean the spur of necessity, for which no substitute in our profession has ever been invented. Success at the Bar demands grinding self-denial; a total sacrifice of ease and other enjoyments; an abandonment of all those things which make life charming, until its attainment becomes itself the supreme charm. It is almost impossible for a man surrounded, as Saltonstall was, with all the enticements and distractions of wealth, culture, and social eminence and the rarest domestic happiness, to turn his back upon all delights and submit for a score of years to the hard labor and drudgery of the law. The old prescription for the young lawyer — "If you've got any money spend it, if your wife's got any spend that, and then work like a dog till you're Lord Chancellor" — had no wisdom or sense for him. There was one other trait that stood in the way of his professional progress. He was too fastidious to submit with patience and equanimity to the associations into which the daily life of the lawyer necessarily brings him. He seemed hardly able to distinguish between personal and professional association, and in the necessary dealing with parties and witnesses, and their too often sordid and mercenary motives and purposes, he felt that he was brought into daily contact with the things he loathed, just as the blood and the pain which shock and distress might drive a sensitive young surgeon from any further prosecution of his profession.

Turning, then, from Mr. Saltonstall's professional career, which, as I think, was altogether too brief — for the high moral standard and lofty tone upon which he always insisted, and of which, while he continued in the profession, he was a notable example, would have exercised a wide and wholesome influence — we come to his public life, as a welcome and favorite orator; as an eminent private citizen, taking a constant and lively interest in all questions that concerned the Commonwealth; and finally as a public officer, ranking among the best examples of the public servant. I find that this ground has been so well covered by Mr. Codman, in his Memoir, written shortly after his death for the Massachusetts Historical Society, that it is only at the risk of repetition that I can refer to the subject at all.

He was a florid, forcible, and earnest public speaker, and had that real love of oratory and of handling an audience without which no speaker can hope to satisfy himself or his hearers. The charms of his voice, person, and manner, and his obvious candor and honesty of mind, made his appearance upon any platform most welcome and agreeable, and often aroused genuine enthusiasm. It was, I think, on those special occasions which involved or celebrated subjects or events most dear to his heart, that he appeared to the best advantage. His enthusiasm for Harvard College knew no bounds, and when he spoke for her it was like listening to a son pleading for the mother who bore him. His services to his Alma Mater were of no mean character. I think it was largely due to the influence of his spirit and advice that his uncle, Charles Sanders, bequeathed to the College the funds for the building of Sanders Theatre, which has become so dear to the Alumni as the scene of all their gala days, and we may be sure that when he drew his check as one of the Sanders Trustees for the payment of that beneficent legacy, his heart exulted with pride unspeakable. He served for three terms on the Board of Overseers, with unfailing and intelligent devotion, and his presence at Commencement was itself always an earnest of his pious loyalty. As President of the Alumni, a post which he filled more than once, he always maintained the grace and dignity of the occasion.

A few quotations from these addresses may not be out of place, to show how he threw his whole heart and soul into such a favorite theme.

At that memorable celebration of 1886, when the College celebrated her Two hundred and fiftieth anniversary in the presence of her guests,—the representatives of all the great institutions of learning at home and abroad,—presiding at the Banquet of the Alumni, he said:—

"The growth of the Nation in wealth and population is a miracle, but what sort of a country would it have been to-day, had it not been for the far-seeing wisdom of the fathers in planting this noble College, which has been the mother not only of her graduates, but through them of schools and colleges innumerable all over our land?

"Here was kindled that beacon fire whose burning brands were caught up and carried from hill-top to hill-top to light the way as far as civilization advanced, and America to-day looks up to Harvard and

is grateful to the mother of generations of the good and learned for the good work she has done.

"I never enter her walls that my heart is not filled with profound emotion. . . . May the day never dawn when such may cease to be the feeling of her children for our Alma Mater!

"Let us show our sons how we love her, that they, fifty years hence, when we are gathered to our fathers, may repeat the story to their children."

In 1892, at the Commencement Dinner, he said:—

"Truly, we love to recur, upon these anniversaries, to our small beginnings in the never-ceasing wonder that such men and women should have left comfortable and luxurious homes with deliberate purpose to found a State in the wilderness. May the story never become threadbare! I feel it a great honor to have been called to preside here, especially upon two such interesting anniversaries as those of the foundation of the College and that of the graduation of the first Class. And I hope that as Henry Saltonstall, in 1642, with that first Class of nine, sate at Scholars Ordinary Commona, with the magistrates and elders, and that as all my fathers have in unbroken succession, since, received her benediction, so may my sons' sons and yours, my brothers, in generations to come, seek her blessing, and when within her walls feel, to the very bottom of their hearts, that they are standing upon sacred ground, with a silent prayer for our dear old Alma Mater."

Again, in 1894, when he spoke for his Class in what proved, alas! to be his pathetic farewell address to the College, after dwelling in words of touching and loving memory upon the virtues and the honors of so many of his classmates who had answered to the last call before him, he said:—

"Mr. President, I am grateful that my life has been spared till this day. Loving Harvard, as I do, it has been a peculiar privilege to bear the tribute paid to the President of the University for his noble work during the last quarter-century. And on behalf of myself and my veteran Class I desire to thank him. I was Marshal on the occasion of his inauguration, and now stand here, with all Harvard Graduates, to say, 'Well done, good and faithful servant!' No man, since the foundation of the College, has done so much as you, sir. It is a line of good and worthy men who have presided over this ancient University, but you have been given the opportunity, the courage, and the genius to place it upon this commanding height, and to have opened the gates and pointed the way to the higher education in this country."

Happy will it be for Harvard when her sons can warm their hearts at the blaze of such enthusiasm.

So, too, on all those great commemorative celebrations in the various towns of the Commonwealth which his progenitors had had a large share in founding,—Salem, Ipswich, Haverhill, and Watertown,—where his presence and speech were in themselves an inspiration, his fervid and glowing eloquence was replete with incidents of provincial, colonial, and ancestral times, with which his mind was well stocked. In Colonial history he was deeply versed, and had studied it *con amore*. He seemed, in spirit, to have followed his progenitors from their luxurious homes beyond the sea, to have dwelt with them in their more humble habitations in the wilderness, and to have witnessed their pious undertakings for the good of the Colony from generation to generation; and, with a heart swelling with gratitude and pride, he poured out his thoughts on such occasions to delighted and admiring hearers whom the hour brought into cordial sympathy with his own emotions.

His religious convictions as a Unitarian, after the order of Channing, he maintained to the end of his life, and in breadth and liberality of view he seems to have emulated the wise example of two of his ancestors who, in this respect, were fairly in advance of their age. When Sir Richard, from across the sea, sent a message of indignant protest to Cotton and Wilson, the ruling ministers of Boston, against their cruel and inhuman oppression for opinions' sake, telling them how "it grieved his spirit to hear what sad things are reported daily of your tyranny and persecution, in New England, as that you fine, whip and imprison men for their consciences," and adding, "I hope you do not assume to yourselves infallibility of judgment when the most learned of the Apostles confesseth he knew but in part and saw darkly as through a glass;" and when, in a later generation, another ancestor, who was a judge of the County Court in Salem, refused to sit upon the trial of the alleged Witches, they exhibited a courage and a breadth of mind far in advance of their times. I think we recognize a kindred liberality of spirit and soul in Leverett when we find him, as President of the Unitarian Club, in his address of welcome to the Clergy on behalf of the Laity, in 1884, saying:—

"I congratulate you on the present outlook for the field of Liberal Christianity.

"We may now enter the portals of many other denominations and hear of the love of God for his children where formerly the very roof-tree cracked and the rafters groaned under the terrible threats of the wrath of the avenging Deity. The good work is going on, and, thanks to your noble and untiring efforts, it will not cease until, in course of time, the disciples of Christ shall ask of each other more of works and less of creed."

There was one subject of a public nature in which Mr. Saltonstall was far in advance of his age, and on which he did not hesitate to declare, in repeated instances and in emphatic tones, his convictions; and these convictions are directly traceable, I think, to the commercial atmosphere of Salem in which he was bred, I mean the importance and necessity to the national welfare of a powerful mercantile marine, as a nursery of commerce and of seamen, and as the only means of securing to America her full share of the carrying trade of the world. He remembered the days before the Civil War, when our flag floated proudly on every sea and in every port. He had heard from the lips of father and grandfather of the time when the carrying trade of America vied even with that of Great Britain. He had seen the whole disappear during the War of the Rebellion, when our ships took refuge under foreign flags. He had witnessed what he deemed the stultification of Congress, in not allowing them to come back after the war, and in not permitting every American who can purchase a ship anywhere to put the flag upon it and to receive the protection of the strong arm of the Nation for it, wherever it sails. He had searched in vain in foreign ports for any trace of the Stars and Stripes where they once floated so proudly to the breeze, and had witnessed the miserable spectacle in the chief port of America, of all her vast foreign exports and imports being brought in and carried out by ships floating every flag but ours.

Perhaps, at this interesting time when our Navy has suddenly grown to be the second in the world, and we are beginning to worship Sea Power as the real source of national strength, a few of his wise and far-seeing utterances on this subject it may be appropriate and timely to recall. In his address to the Boston Chamber of Commerce, in 1888, he said:—

"We are told that this decay of our shipping has been brought about by natural causes: that other communities can build ships cheaper than America; that steamers have taken the place of sailing vessels; and that the development of our great interior by building railroads and bringing its products to the coast is far better and more profitable than carrying them across the ocean. This is, I doubt not, partly true, and following as it did the destruction of our magnificent merchant fleet or its sale to England during the war, and the refusal of Congress to permit former owners to buy back their ships, together with the imposition of a Tariff tax which put a veto upon building others, it proved an irresistible argument.

"But are we never again to attempt the restoration of our shipping? Lying between the two great oceans are we forever to be dependent upon our rivals to carry our surplus products to South America and the East? What then is to be done? We cannot yet build steamers as cheaply as they are built abroad, and have not the skilled officers to command them, nor can we, under our laws, purchase them abroad. The very mention of such a thing frightens some of our political magnates out of their wits, and is declared to be a deadly thrust at our ship-building interests. But this seems the very height of absurdity. We import machinery until it can be constructed here as cheaply as the imported article. Ships purchased abroad, placed under our flag, and officered at first, perhaps, by foreigners, would give employment directly and indirectly, to thousands of our people. Our young men would soon learn to command them, our mechanics would repair them, our miners would supply them with coal, and it would not be long before our ship-yards would hum with the busy industry of building them. The world has moved on while we have been asleep in the matter of ships. Is it not high time to bestir ourselves to the necessity of overtaking other nations?

"'Home markets' are all very well, but this Republic should not be thus limited in its ambition, and should seek to send to other markets its surplus productions. This can be done, it seems to me, only by a judicious reduction of the Tariff, and the repeal of so much of the Navigation Law as prevents our buying ships abroad for the establishment of an American merchant service."

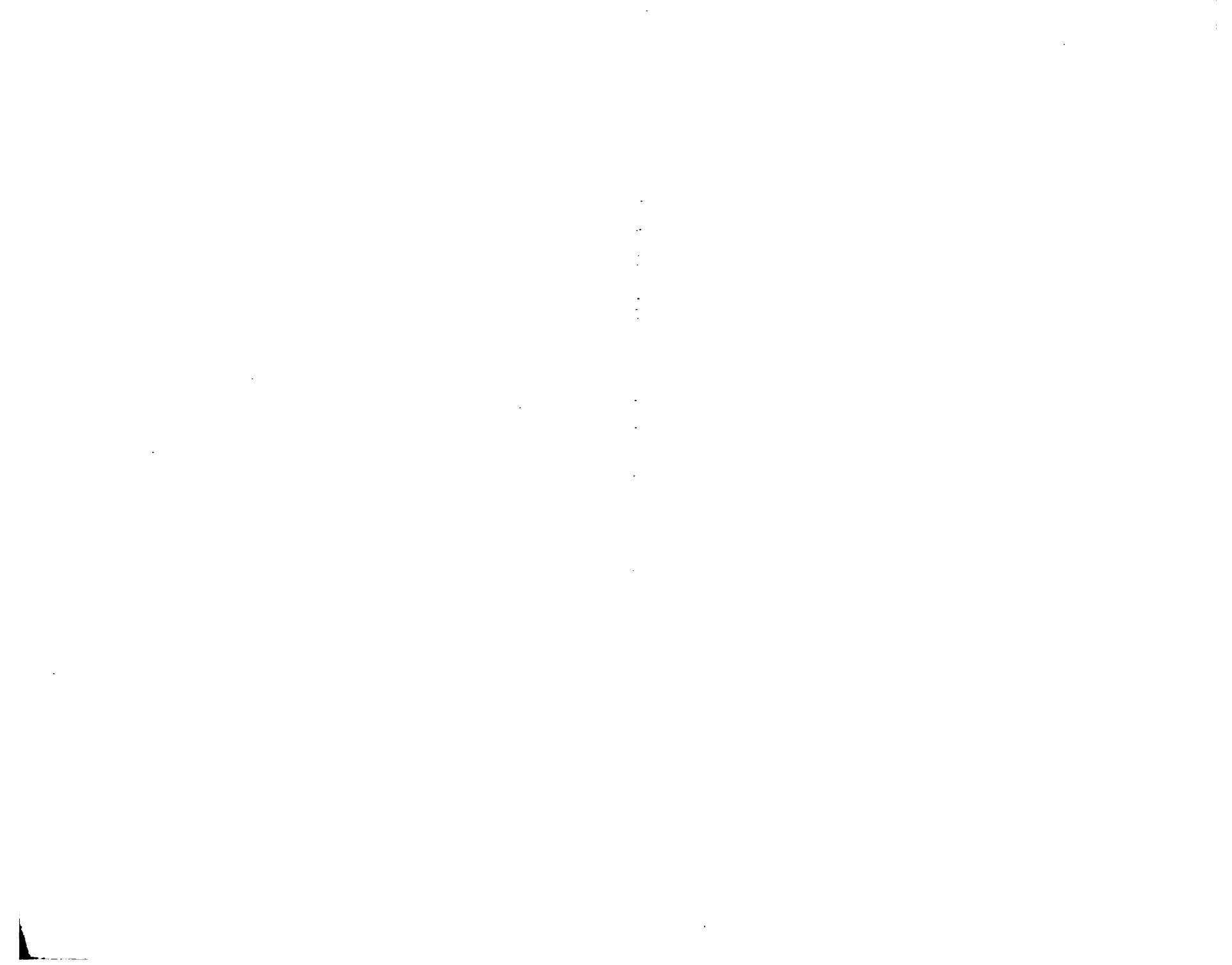
The traditions of his maternal ancestors, who followed the sea, rose from the forecastle to the quarter-deck, and retired to become great ship-owners, inspired these words. They recall the days when the sails of Salem ships whitened every sea, and our proud flag floated to the sunrise from their peaks on the shores of

every continent,—the days of her merchant princes, the Derbys, the Grays, and the Crowninshields, the days of the foundation of the East India Marine Museum, which gathered the curious treasures of the farthest East and West, brought home by its own members, who must, for admission to its ranks, have sailed as masters or supercargoes in an American ship round the Cape of Good Hope or Cape Horn. Alas! there are no such men any longer; the Society has dwindled to a half-dozen octogenarians, the last of whom will soon have slipped his last cable. There are no recruits for its ranks, because there are no American ships to make the required voyages.

In the ten years since these words were uttered, and especially in the three years since his death, the world has indeed "moved on," as he said. If we are to have a great Navy to protect our commerce, we must have a great commerce to protect. If we are to grasp and hold the share of Sea Power that belongs to us, we must have a great merchant service. The American people will not much longer tolerate laws upon our statute book which prohibit the resurrection of this great source of national life and strength. Such words as these will at last be heard, and all who stand in the way of this rising tide of Americanism will be swept aside.

By good rights, a man so gifted as Mr. Saltonstall, and so admirably adapted, as the event proved, for public office, should have been called into the public service at an early period of life. It is to such men of means, and talents, and public spirit, willing to devote their energies, their leisure, and their patriotic spirit to doing the work of the public, that we may hope hereafter to look for the redemption of our Civil Service. Such men may be kept in the background, so far as office is concerned, by party machines and party despots, but their duty and obligation to study public questions, and to make known their deliberate judgment upon them for the public benefit, is always imperative, and Saltonstall recognized and discharged this duty with unfailing fidelity.

Whether we agree or disagree with his opinions and positions declared in his political speeches,—and I have found but little in them with which I could then or at any time since agree,—no one can question the true ring of his patriotic spirit, or the lofty moral purpose which always actuated him. There is no doubt that he



would have made a most useful member of Congress or a distinguished Governor of Massachusetts. His character, his conduct, and his talents would have adorned either station, and we must honor and approve the honorable ambition which made such places attractive to him. It has always seemed to me that from 1860 to 1876 he was unfortunately out of his element in the Democratic party of Massachusetts. He seemed like a gold fish in strange and unaccustomed waters; as he could never feel at home with the constituency of his native, county of Essex, when it preferred to elect General Butler as its representative in Congress, so he could not co-operate with the party in the State which afterwards made the same doughty soldier, year after year, its candidate for Governor, and finally elected him to that exalted office. It is not to be wondered at that he failed to follow the vast majority of his friends and natural associates into the ranks of the Republican party. Like his eminent father, he was a devout disciple of Webster, and the preservation of the Union, by and under the Constitution, and without the risk of any invasion of its provisions, was the fundamental article of his political creed.

The formation of a Territorial party, pledged to prevent the extension of slavery under the Constitution, was in the judgment of that School the first step toward inevitable disunion. Neither Webster nor any of his immediate followers could see that that other watchword of his, "Liberty and Union, now and forever, one and inseparable," could never be realized except by the utter destruction of Slavery. It was the far-seeing mind of Lincoln that clearly discerned and declared that a house divided against itself could not possibly stand. It was this view of the conflict between Freedom and Slavery—so irrepressible that both could not continue permanently to exist under the same sovereignty, but one or the other must go to the wall, Constitution or no Constitution—that repelled men who felt as Saltonstall felt from joining the new party. So he stood aloof and resisted, to the best of his power, its first effort to elect Fremont, which fortunately failed, and could not share in its supreme triumph in the subsequent election of Lincoln. But that he was absolutely sincere and honest in his convictions, and at the same time loyal to the core, appeared by his patriotic conduct when war actually came and the deadly assault on the Union was delivered.

Webster did not live to witness the terrible spectacle which he had eloquently deprecated,—the land divided against itself and drenched in fraternal blood—and Lincoln's prophecy proved true to the letter. The Union could not be saved except by that violent breach of the Constitution which was made by the Emancipation Proclamation. But the same political party which finished the war on that issue and restored Liberty and Union together, straightway healed that breach by the new Amendments. In the great questions involved in reconstruction, which divided the country for so many years, the opponents of the Administration stoutly maintained their array, and vigorously, and without discrimination, opposed every measure and every proposition of the dominant power. In this long conflict Saltonstall took a prominent, and always a manly part, and his appearance on the platform was always greeted with welcome and applause. It is pleasant to forget these dead issues on which he wasted so much honest and eloquent breath, and to follow him into the active and highly useful public service to which, at last, in his riper years, he was summoned, and in the conduct of which he displayed great merit, fitness and capacity.

When the people of the United States determined to celebrate the Centennial anniversary of their Independence by an Industrial Exhibition at Philadelphia, in which all the States should be invited to participate, such exhibitions were substantially in their infancy in this country; in fact it was with us an entirely new experiment on any such grand and universal scale. It was to be held under the auspices of the Federal Government, which contributed \$1,500,000 for the purpose, while the private, State, and municipal subscriptions aggregated several times that amount. The successful Expositions of the same character, in previous decades, in London, Paris, and Vienna challenged America to do its best in this generous rivalry at such a signal epoch in its history. Whether the people of Massachusetts were not alive to the importance and vast extent of the projected enterprise, or were doubtful of its expediency and of its probable success, its Legislature, at the session of 1875, made the wholly inadequate appropriation of \$50,000 to enable its citizens to participate in it; and this seems to have indicated a general apathy among the people of the State in regard to it. But as the event proved, it was most fortunate for the

Commonwealth that Governor Gaston selected Mr. Saltonstall as Chief Commissioner for Massachusetts. His appointment was somewhat tardy—in September, 1875, only a few weeks before the final assignment of space for exhibits upon the floor—but the Chief Commissioner, impressed with the importance of the undertaking and of the State's doing herself full justice in such a magnificent competition with her sisters, and convinced that if she did so, her showing would compare well with any other section of the country, put forth all his energies from the receipt of his commission until the close of the Exhibition, and, aided by many public-spirited volunteers, he saved the honor and credit of the State. His personal popularity and wide acquaintance, and his interest in agriculture and education, lent a sanction to the appeals which he made by public addresses and personal influence to enlist popular sympathy and enthusiasm. The result was highly creditable to the State which he represented, and when the Exhibition opened, the fine display of her educational development and of her marine interests and fisheries—always such important elements in her History—attracted great attention. He made a fine Address in Independence Square to the vast multitude which there assembled, on the day before the opening, in response to the call for Massachusetts. His manly presence commanded attention, his magnificent voice reached the outmost circle of the crowd, and the speech was quite worthy of the applause with which it was received. His thought naturally ran in the highly patriotic strain, recalling the great event which was celebrated, and the great men of Massachusetts and Pennsylvania who took part in it together, in Independence Hall, under whose shadow he was speaking.

The thing to be noted in this, his first really public service, is his personal devotion to it as a public trust, and the excellent executive and administrative ability which it called forth. He could not have devoted himself with more zeal, intelligence, and industry to the most lucrative private business than he did to this unaccustomed and gratuitous employment. In a man already past fifty, who had led a life of ample leisure, this was very noticeable. Money-making, I believe, had never any special charms for him, but this opportunity to serve his fellow-citizens in a useful and honorable employment he highly enjoyed and improved.

Hardly had he completed these interesting labors, when he was

called upon by the Democratic National Committee to perform a most arduous, and certainly distasteful, public service,—to go to Florida and attend the canvassing of the Presidential vote in that State in the disputed election of 1876. The terrible excitement which then prevailed as to the true result of the election can never be forgotten. Looking back now after the lapse of twenty-one years, in the cool after-light of history, it is impossible to deny that the partisans of Mr. Tilden had some grounds for believing that he was entitled to a majority of the electoral vote. Even those of us who then believed, and still believe, the contrary, must admit that. The practical suppression of the negro vote in the whole intervening period, which is now universally understood and admitted, had not then assumed its present definite form, and it was not unnatural for each side honestly to believe that in the disputed States, in districts where their adversaries had control, such suppression or other fraudulent manipulation of the vote had been practised. At any rate, the belief of unfair play was universal among Democrats, and almost as universal among Republicans. In this predicament an imperative desire arose, among the constituted authorities of both parties, that men of tried and incorruptible integrity, representing both sides, should go down and personally witness the local canvass. To such a call from his party Mr. Saltonstall could not well refuse to respond. He went, and seems to have had a most trying time. He returned absolutely convinced that aggravated frauds had been committed, both at the election and in the official canvas, by which the electoral vote of the State was awarded to General Hayes, and he so reported to the Committee which had sent him. But it is not to be forgotten that Saltonstall was a strong partisan—always confessedly so; that in matters where his feelings were enlisted his mind did not act judicially; and that quite as strong a conviction the other way was formed by honest men equally partisan on the other side. Fortunately for both parties, as I think, the truth as to the original facts will never be known, and History is likely to stand by the conclusion of that noble Republican, General Barlow, who was sent upon the same mission by his party, and who was always as fearless as he was honest,—that it remained doubtful whether the actual vote cast gave a Hayes or a Tilden majority; and this doubt will forever uphold the decision of the Electoral

Commission, that both parties and the Nation must abide by the actual return of the State Canvassing Board. It was a most critical period in the history of the United States, when we seemed almost on the verge of civil war again. It was averted by the patriotic and conciliatory spirit of both parties in constituting the tribunal which was to decide the fate of both; but for one, I must admit that the chief meed of praise for magnanimity, both in making up the Commission, and in submitting without question or murmur to its decision, is due to the party to which Saltonstall belonged, which came out the loser of the momentous stake by a strictly party vote of the Commission. At the same time, I believe that the general judgment of the people, which sustained the Republican party in power for the next eight years, was satisfied with the result accomplished.

Mr. Saltonstall's advocacy of a general Treaty of Arbitration with Great Britain, upon the occasion of the visit of Sir Lyon Playfair and other celebrated Englishmen, as the bearers of an Address, signed by their associates in Parliament, in favor of such a treaty, is worthy of record at this time when rulers and people of both nations are in favor of strengthening and fastening the ties of blood and interest and duty which unite us, and especially at the close of a war which, at the time his words were uttered, seemed an absolute impossibility to our generation. At the Banquet given by the Commercial Club of Boston in honor of this British deputation, in 1887, he said:—

"The mission of these people, representing as they do 232 members of the British Parliament, will, I believe, be referred to in the future as one of the most interesting events in history, for how can we doubt that it will be entirely successful? The only wonder is that in this period of advanced civilization such a Treaty as is by them advocated should be necessary,—that two nations so near akin as Britain and America, professed followers of the Prince of Peace during all these centuries which have elapsed since he preached the gospel of peace and brotherly love, should feel that war could, for any possible cause, arise between them. Nor do I much believe that Great Britain and America would, without such a Treaty, ever declare war against each other.

"The series of negotiations and compromises which settled the great excitement attending the questions of the Steamer Caroline, the North Eastern Boundary, the Oregon Boundary, and, above all, the Arbitration

on the Alabama Claims, which set the example to the world of a just and honorable decision by a Court of Arbitration of a great, exciting question which threatened to involve the two nations in war, point to Arbitration as the sole method of solving all difficulties, when diplomacy and negotiations fail.

"A great Nation of sixty millions of people, pointing to her past achievements in arms, need make no further display of prowess to secure its proper renown among the nations of the world. The telegraph, the press, the post office, the railroad, the steamship, and, more than all, the cable laid by our great Anglo Saxon Race, so link the nations together that it would seem that wars must cease and huge armies return to the work of producing food for themselves and their fellow men. All honor, then, to these bearers of good tidings, heralds of 'Peace on earth, good will toward men.' We pledge them our most zealous and ardent support, nor will we cease our efforts until they are crowned with success."

Here, again, he was decidedly in advance of his time. The Arbitration Treaty negotiated between the two nations failed in the Senate, and only three years ago, upon the occasion of the Venezuela incident, Congress, without a dissenting voice, phrenzied by the hostile message of the President, and backed, as it seemed, by the sentiment of a vast majority of our people, was eager to spring to arms even against Great Britain. It was but a momentary phrenzy, and the easy and good-natured forbearance of the British Government made war impossible. But the great armaments of the world have vastly increased, and are still increasing, and great wars still seem inevitable unless heed shall be given to the proposal of the young Czar of Russia—the last monarch in the world from whom it might have been expected, the ruler of the nation which has the least to lose and the most to gain by war—who now calls all the nations to a Conference for general disarmament and peace.

The eight years that elapsed from his return from Florida until the election of President Cleveland, in 1884, were quiet years for Mr. Saltonstall and, doubtless, the happiest of his life. Finding sufficient occupation in the conduct of the many private trusts which the universal knowledge of his steadfast integrity and fidelity imposed upon him, watching and enjoying to the utmost the development and settlement in life of his children, surrounded

by all that could enrich life and embellish it, with ample leisure for the indulgence of his choice and cultivated taste for art and literature, he must have been as happy as the lot of humanity ever admits.

But more stirring and active times were in store for him, and his one enduring claim to historical remembrance is the really great record which he made as Collector, for three years, of the Port of Boston, to which office he was appointed by Mr. Cleveland, in November, 1885, where he did brave battle for the cause of Civil Service Reform as a champion in the front rank. Up to the time of his appointment he had been chiefly known as a partisan, but he had, nevertheless, constantly and consistently avowed his faith in the absolute necessity of a radical reform of the Civil Service. There was nothing in this inconsistent with his loyalty to party, for not only his own party, but both parties, by their National Platforms, had declared their devotion to this great cause; but Mr. Saltonstall's ruling passion and distinguishing characteristic was absolute honesty, and he believed in holding his party to its solemn vows, and, at all events, would abide by them himself. No one knew this better than President Cleveland and his constitutional advisers, one of whom, Judge Endicott, was his lifelong and intimate friend. In July, 1885, the President sent for Mr. Saltonstall and urged upon him the office of Chief Commissioner of the Civil Service in place of Mr. Dorman B. Eaton, who may justly be regarded as the pioneer and founder of this Reform in America. To succeed such a man in such a position might well be regarded, as it was by Mr. Saltonstall and his friends, not only as a deserved recognition but a very great compliment; but the duties of the office would have compelled his absence from Boston, and the abandonment of trusts and duties there that were, at the time, imperative, and he persuaded the President that it was his duty to decline the office. But Mr. Cleveland was not willing to excuse Mr. Saltonstall from the public service, and his appointment as Collector soon followed. He took the position about public office of any kind, that he would not seek it, would not lift a finger to get it, but that if it came to him unsought, and his private circumstances permitted, he must accept; and he did. Men of all parties loudly approved the appointment. In fact, everybody was delighted with it from its manifest fitness, except only

the spoils-men of his own party who knew that, come what might, he would keep his word, and stand fast by the faith which he had professed. The reason for general satisfaction was well stated by the press, — because "Mr. Saltonstall was one of the cleanest men in public life." The remarks attributed to the new Collector in December, 1885, by the New York Evening Post, the leading advocate of this Reform from the beginning, are worth quoting:—

"After twenty-five years the Democracy is in power with the Civil Service Law in force, and a President the very embodiment of Civil Service Reform principles. Now, I go into office with the Civil Service Law to protect me from the whole Democratic party. Why, they would be upon me from the very hills of Berkshire. Now, I say to the office seekers, 'Gentlemen, there are only a few offices and here are one thousand of you. In regard to the great mass of clerks I have, and can have, no more control than any of the gentlemen before me. I may find a clerk incompetent or unworthy of his trust and discharge him. Can I fill the vacancy as I choose? Not at all. Up comes a Civil Service Commissioner who may say to me, "Here are four men who have passed the examinations and are certified for appointment. Take your choice." Here may be men white or black, rich or poor, native or foreign-born, Democrat or Republican, all equal before the law, and into that vacancy the Collector must or should put the man who is best qualified.' Here is a grand advance. Every citizen who loves his country should support this law, and the party which dares to array itself against it will be lost. Other issues — the Currency or the Tariff — may affect the prosperity of the Nation for a time, but by standing by this law we may do more for the ultimate standard of the Nation among the peoples of the world than in any other and all other ways combined."

The same high authority pronounced this to be the true gospel of Civil Service Reform, and his great glory was that, in his conduct of the office, he carried out this gospel to the letter. When he took office, there were two hundred and forty places in the Custom House which were within the classified lists. In the first six months of his incumbency he removed only ten, and in every instance the vacancies were filled by competitive examinations, and without any regard to the politics of the candidates; and during the same period, of ninety-seven officers who did not come within the rule of classification, and whose places he had a perfect right to

fill at his pleasure, or to make room for his party's supporters, he had removed only six, and these for cause, retaining all those who were competent and capable, and had faithfully performed their official duties. Such a record was without a precedent in any other Custom House in the land, and drew marked public attention to Mr. Saltonstall, who, on repeated public occasions, had declared that his conduct was not only required by the law, which he must and would obey, but was entirely in harmony with his own personal convictions as to the principles which the public welfare required. Newspapers of the opposite party made the false charge that he was really serving his party, and was filling vacancies with candidates among those equally qualified who had the strongest party backing. This charge he manfully declined to notice or deny, until such denial was demanded of him by a local Civil Service Reform Association of which he was a member and officer, when he reluctantly published a most modest, but emphatic, refutation of it. Soon afterwards the cormorants of his own political party, enraged by what they considered an unprecedented retention of the spoils which were their natural right, made a vicious and savage attack upon him, which resulted in a display of true mettle and courage on his part, to the delight of all true friends of Reform and of the country, and placed him at the very front of the champions of the cause which he had so nobly espoused. "What use to be Democrats at all," said the spoilsman, "if principles so abhorrent to our ancient party practices, and to the Jacksonian theory that to the victors belong the spoils, are to be carried out under our very eyes in the chief Federal establishment in the State?"

A test must be made whether the great party machine of the Commonwealth or the Collector was the stronger power. Accordingly, a sub-committee of its Executive Committee, armed and equipped with all the authority which that august body could confer, waited upon him with the impudent demand "to look over his list of subordinates and see how many of them are Republicans and why they are retained in office." The Collector, with true dignity, but, of course, in his ever courteous and gentlemanly manner, refused to treat with them or grant them the information, if they came as a committee of the Democratic party or of any other political party. He took the ground that

for his official conduct he was responsible only to the President and the Secretary of the Treasury, and would recognize no accountability to any one else, not even the great Democratic party, whose creature and subject they erroneously supposed him to be. He took, and held the position that the Civil Service Law was as binding as any other law, and that he was bound by his oath of office to obey it; that if, unfortunately, the law should be repealed, or the Collectorship remitted, by higher authority, to its old status of a party machine, he should feel compelled, by his convictions, to resign the office.

In explanation of his conduct to the public he further said :

"If I can conduct the office for the best interest of the government, and at the same time raise it to the position it should permanently occupy under the Reform Law, I shall consider that I have been of some service to my day and generation. I consider that the very existence of the Republic depends on this or a better law. It has its faults and can be improved, but, on the whole, is efficient, and I have found it so in its workings. With one or two exceptions I have not drawn a single man from the Civil Service Lists that has not proved not only acceptable, but eminently so, for the position to which he was appointed. The party that succeeds in carrying out and making permanent a thorough reform of the Civil Service, and in redeeming the country from the Spoils System should and will, in my estimation, receive the gratitude of posterity."

The friends of the Reform throughout the country took new hope and courage from this truly magnificent position of the Collector, and it is needless to say that even the managers of his own party were convinced, at least, that it was impregnable, for, when the State Committee reported their grievances to the next State Convention, that body gave them only the cold comfort of renewing the old platitude about Civil Service Reform, with the qualification "that 'offensive partisans' should not be permitted to remain in office."

Mr. Saltonstall continued to discharge his duties as Collector by the same righteous and commanding standard, to the immense satisfaction of the whole country until after the inauguration of President Harrison, who, regarding the office as a political one, and its incumbent as the personal representative of the President in the State, called for his resignation; but Mr. Saltonstall took a

different view, and, standing upon the expression in the new President's letter of acceptance "that fidelity and efficiency should be the essential test of appointment, and that only the interests of the public service should suggest removals from office," refused to comply. This unfortunate difference of course terminated in the appointment of a new Collector in his place, but his retirement, especially under such circumstances, attracted universal attention, and called forth the most emphatic encomiums upon his spotless and noble personal character and official record, which were worth far more to him than any office, which must have greatly cheered his subsequent years, and which his children must cherish as a proud memorial,—the most signal of all being a letter signed by nearly two hundred of his fellow citizens of all political parties, who embraced all that was best and bravest in the city where his good work had been done, indorsing his conduct, thanking him for the great service he had rendered to his country, and inviting him to a public dinner, which, however, he felt constrained to decline.

After retiring from office, Mr. Saltonstall spent the remaining years of his life at his delightful home at Chestnut Hill, in absolute domestic felicity, surrounded by all that could make home happy. He lost none of his interest in public affairs, but there was no further occasion or opportunity for him to take an active part. He held important positions in many charitable associations, to which he was always devoted, and where he exercised great influence for good. He now resumed and completed a great labor of love which for many years had occupied much of his time and thought,—the preparation, for private distribution among his kindred and friends, of a truly magnificent book — *The Ancestry and Descendants of Sir Richard Saltonstall of New England* — containing most careful and interesting narratives of the lives and services of the most distinguished members of the family, embellished by their portraits by famous artists, which had been the precious ornaments of his house. It is a valuable contribution to American History as well as to genealogical lore. His design was faithfully executed by his eldest son, after his death, by its publication at the Riverside Press.

My last meeting with him was after his last Commencement Dinner when we shook hands, as he got into his wagon with his sons, all Harvard Alumni, to drive to Chestnut Hill, little thinking

that he would no more set foot upon that "sacred ground." Very soon afterwards he was overtaken by a mortal disorder, which he bore for months with that calm resignation and cheerful hope which we should have expected of him after such a life, and in April following he was gathered to his fathers, leaving nothing in his record to regret.

After we have told all that he said, and all that he did, there is much about him that tongue cannot tell or word describe. There was a strong and fascinating personality in Saltonstall, which attracted all with whom he came in contact in every relation of life. The eye must have seen it, the ear must have heard it, the heart must have felt it, to understand what I mean. Huntington's portrait of him in the Custom House, painted at the invitation of the same citizens of Boston who had tendered the banquet which he declined, gives only an imperfect impression of the living man, for though a very good painting, there is quite as much of Huntington as of Saltonstall there. The magic touch of a Rembrandt, a Lawrence or a Copley, or the subtle hand that painted Silence Saltonstall — on whose features handed down through seven generations he loved to dwell — might possibly have transferred the real man to canvas. It may be truly said that everybody respected, honored, and loved him, and that he deserved it all. While he was manly to the very core, his heart was tender and sympathetic as a woman's. Nothing can repair the loss occasioned by his death in the household of which he was the head and the soul. And each of us who were his friends and associates, as his image rises before us, may ever breathe the constant sigh —

" My [pleasant] neighbor gone before
To that unknown and silent shore,
Shall we not meet as heretofore
Some summer morning?"



DECEMBER MEETING, 1898.

A STATED MEETING of the Society was held in the Hall of the American Academy of Arts and Sciences on Wednesday, 21 December, 1898, at three o'clock in the afternoon, President WHIELWRIGHT in the chair.

The Records of the Annual Meeting were read and approved.

The Rev. HENRY A. PARKER then made the following communication : —

Palfrey, in his History of New England (ii. 485), writes of the Quakers : —

" Sooner than put them to death, it were devoutly to be wished that the annoyed dwellers in Massachusetts had opened their hospitable drawing-rooms to naked women, and suffered their ministers to ascend the pulpits by steps paved with fragments of glass bottles."

Oliver, in his Puritan Commonwealth (p. 210), writes : —

" Their methods of prophesying had in them something disgusting and ludicrous. Women would go naked through the streets, shouting woes upon the elders and magistrates."

And so other writers to the same effect, conveying the impression that immodesty and indecent exposure of person by the Quaker women were common, and the occasion, indeed, of the persecutions inflicted on the Society of Friends.

Colonel Hallowell, in his Quaker Invasion of Massachusetts,¹ shows that, so far as is known, there are, at most, but three instances of Quakers ever voluntarily appearing unclothed in public; that before the first instance of this sort, the Quaker women had been abominably treated by the Massachusetts Bay authorities; and that one of the unfortunates whose actions have

¹ The Quaker Invasion of Massachusetts (second edition), pp. 72, 99-104.

given occasion to such scandal was a young woman who was not long after adjudged by the court to be insane.

The first instance of this sort of thing is that of Deborah Wilson, a convert to Quakerism, who appeared naked in the streets of Salem, in 1662, — afterwards adjudged to be insane.²

The second instance is that of Mrs. Lydia Wardwell, also a Massachusetts convert to Quakerism, whose husband had been much persecuted for his religion; she came naked into the Newbury Meeting House, in 1663.³

The third alleged instance is from Plymouth Colony, and is twenty years later. In this case Jonathan Dunham and Mary Rosse were the chief actors. Increase Mather's account of the affair⁴ is not borne out by the Plymouth Court Records,⁵ in which nothing is said of any lack of sufficient clothing on the part of the participants in a queer religious orgy, which was confined to a private house, nor does it appear that the actors were Quakers.

So far as I am aware, no other instance of this kind among the Quakers has been brought forward in this part of the world.

However, the members of the Society of Friends are not exempt from the chance of mental disorder, and a curious instance of the same sort of impropriety of which Deborah Wilson was guilty at Salem, in time of persecution, was repeated long after, in Richmond, Virginia. The different way in which the matter was there dealt with, and some peculiarities of the narrative, seem to me to make the affair of some historic interest. All that I know about it is the following record under date of 28th 2nd 1792: —

¹ The Quaker Invasion of Massachusetts (second edition), p. 104.

² *Ibid.* pp. 99-104.

³ An Essay For the Recording Of Illustrious Providences: Wherein, An Account is given of many Remarkable and very Memorable Events, which have happened in this last Age; Especially in New-England. By Increase Mather, Teacher of a Church at Boston in New-England. [Quotations from the Psalms cxi. 5; cxlv. 4.] Printed at Boston in New-England, and are to be sold by George Calvert at the Sign of the Half-moon in Pauls Churc-yard, London, 1684, pp. 345-347. The tale was repeated, eighteen years later, by Cotton Mather, in the Magnalia (edition of 1702), Book vii. chap. iv. p. 26. Jonathan Dunham, *alias Singleterry*, is referred to by Mather, with his usual inaccuracy, as "Dunen." Cf. Henry Martyn Dexter's *As to Roger Williams* (Boston, 1876), p. 135; and Hallowell's *Quaker Invasion of Massachusetts*, p. 72.

⁴ Plymouth Colony Records (July, 1683), vi. 118, 114.

"Lodged at Tho: Harris's.—This Friend lately conceived himself constrained to pass many Times through the Town of Richmond entirely naked without uttering any Words, he is altogether a sensible, well inclined Friend, once by Order of a Justice (so called) he was severely whipped in the Performance of his said apprehended Duty by the Hands of a Mulatto, which however was highly resented by the Inhabitants, this Mulatto was instantly made to feel the Weight of a Cart Whip very severely by a dutch Carter who was transiently passing along, another Time Tho: was committed to Prison where he remained some Time, & another Time he was carried to the City of Williamsburg & examined whether he was in his Senses or not; and those who examined him pronounced him better in his Senses than were they who brought him, & so dismissed him, & think he never suffered any on said Account any more, though often concerned to appear in that Way."¹

Is there anything more about Friend Thomas on record? With

¹ This account of Thomas Harris's misfortunes is from the Diary of James Iddings, an accepted minister and in his day a preacher of much reputation among Friends. The Diary is a hasty private record of an extended preaching tour in Maryland, Virginia, and North Carolina. In 1872, I copied the original manuscript, then in the possession of the late Rev. Charles Augustus Iddings, of Montgomery County, Maryland, the writer's grandson and my uncle. It may be of interest to add the following, as showing in what estimation the Quakers in general and the writer in particular were held in Richmond. On the third day after his stay with Friend Harris he writes:—

"Afternoon rode 26 Miles to the City of Richmond, had Meeting there next Day which was 4th of the Mo. & 1st of the Week: we met with a great Multitude of the Inhabitants in the common Court Room: but just as we took Seats a Message came from the Person of the Place informing, although he had appointed to Preach in the Capitol (a large Room under the same Roof where the General Assembly met) he inclined to give it up to Friends, this was a very large and elegant Hall, well adapted as to galleries, Seats, &c., was very crowded, many stood, all behaved pretty well; . . . the Governor, great Men & some thought near all the Inhabitants of the Town were there."

Though not germane to the subject, I may add that Iddings was a strong anti-slavery man, and on this journey had trouble on one occasion from yielding to the conviction that it was his "Duty to speak plain on the Subject of Slave keeping." He is said to have kept a regular station of the "Under-ground Railroad."

In a versified geography of his, printed by William Black, at Wilmington, Delaware, in 1804, are these rather good couplets on the subject:—

"If pardonable in any case,
Thus to enslave the human race,
The greatest pardon these will know,
Who now the greatest mercy show."

[1808.] GOV. HOPKINS'S HARTFORD SCHOOL STOCK. 389

all respect for the authorities at Williamsburg, I imagine that his after history went to show that the impulse to this, his apprehended duty, which he so conscientiously performed, was followed by other impulses that charity could ascribe only to a progressive insanity.

The paper was discussed by Messrs ANDREW MCFARLAND DAVIS, WILLIAM WATSON, and ANDREW C. WHEELWRIGHT.

Mr. HENRY H. EDES communicated an original Account of the "School Stock" given towards the maintenance of a Grammar School in Hartford, Connecticut, by the Trustees under the will of Gov. Edward Hopkins.

The text of this paper is as follows:—

An Accompt of School-Stock in Lands and Monys Given towards maintenance of a Grammer School in Hartford, being now by order of the School-Comity comitted to James Richards to make Record and keep an accoⁿ of: viz^d

Impr. M^r Edward Hopkins (by the Feoffees in Trust for dispose of his Estate in New-England) for promoting Learning in these parts Gave unto Hartford Four Hundred Pounds; viz^d

In the Farm on the East-side the great-River. 270 "

In monys that purchased Loveridge's house & homelott, 30th } lb. s. d.
In monys which built part of the School-house — 40

A Generall Court of Election the 16th of May. 1650.

Edward Hopkins Esq: Governo:

M^r Cullick, Mag. & Secr^r

[Endorsed]

M^r Hopkins
Donation to
School
1650

Remarks upon the various Hopkins Foundations were made by Messrs WILLIAM WATSON GOODWIN and CHARLES PICKERING BOWDITCH.¹

¹ Gov. Hopkins's bounty is similarly enjoyed, to this day, by New Haven, Connecticut, and by Hadley and Cambridge in this Commonwealth, as well as by Harvard College. Mr. Bowditch has printed, in a pamphlet of 88 pages, An Account of the Trust administered by The Trustees of the Charity of

Mr. EDES also communicated an original letter from Hezekiah Usher to the Commissioners for the United Colonies respecting his disbursements on account of the printing, binding, and distributing of Eliot's Indian Bible, and Usher's Account of his financial operations in connection therewith, and with other Indian books.¹

These papers are in the following form:—

I.

Boston : 26 : Aug : 1664

Hon^d & Service p'mised

I am bould to trouble yo^a with the incloſed acco^m desiring in the most conſeant Seafon to p'ſent them with my ſeruice to the Hon^d Commissioners, haueing relation only to what hath bene diſburſt by me, excepting ſome Salleryes that are in part & wholly payed which I bring not to the acco^m incloſed being aſurd p'ticular order will in ſeaſon be giuen forth for the diſcounting of the fame, one Baillance of acco^m made vp the 18th 7.63 wth y^e Hon^d Commiſſioners, was reſting due 504^d 18/4^d wth was to be payed after the raiſe of 25^d P C aduanc^e; And att the ſam time I received a bill of Ex^r for 400^d wth Bill was accepted by the Hon^d Corporatiō, wth I have giuen the Acc^r C for it with allowance of 12^d P C according to agrem^t, of wth I am to make paym^t according to vſeall faille of goods for Caſh Itt is my deſire that when the 504^d 18/4^d is payed of, I may know to whome I may pay according to the laſt agrem^t that I may give not offence when I act according to order I have here with ſent acco^m, of wth Bibles were printed & how diſpoſed desiring yo['] full order, for the diſpoſeall of them that ar reſting, yo^a will find one the acco^m wth I ſent to Engld & wth I have bd vpp & deliuered to m^r Elliott order, whether it be yo['] pleuure, his order for the diſpoſeing of them, be by me attended, one the acco^m

Edward Hopkins, of which Board he is Secretary and Treasurer. The Appendix preserves much additional matter of interest and value, including the text of Governor Hopkins's Will, and Lists of the Trustees, Officers, and Beneficiaries under the Trust.

¹ Some account of Usher and his work on the Indian Bible may be read in Thomas's History of Printing in America (edition of 1874), i. 54-57, 60. The abstract of Usher's Account which there appears (p. 57) furnishes but few of the particulars found in our text. Cf. Plymouth Colony Records, x. 318-319, 322.

yo^a will finde 42 Bibles bound, for wth the binder was allowed 2/6^d 7^d Bible wth he complaines of & pfeſſeth he cannot liue one it, but deſireth 3/- 7^d bible to be allowed wth I leauue to yo['] Hon^d to aprob^e, I haue ſtill reſting in my hand of the printing pap^{er} 51 lf wth is all times ready for yo['] ſeruice; not mindeing any thing farther of concern^m to trouble The Hon^d Coche: wth leauing yo['] high concern^m's to the lord[']s guidance I tak leane & reſt

yo['] Serv^r Hezekiah
Veber

[Addreſſed]

For his
Hon^d Frend m^r Thomas
Danforth to be
communicated
to the Hon^d
Commiſſor's
when mett

[Placed]
M^r Veber L'
Aug^r 1664

II.

In Boston the 27 August : Anno 1664

The Honorable : Commiſſioners : are D^r To ME
Hezekiah Viher Senio^r for y^e Several diſburſements
as foloweth - viz^r:

	d	s	d
To paym ^t to M ^r Chancy after y ^e Acco ^m in the year 63 was giuen in	5	—	—
To payment to M ^r Day for mending the preſe	11	10	—
To 2 Cheſts for Bibles ſent to England	5	—	—
To paym ^t To M ^r Shearman & M ^r Danforths ord ^r	4	10	—
To 2 New Chafes	2	5	—
To 2 Doſzen of Skines for Balis	1	4	—
To printing y ^e Epiftic Dedicatory	1	—	—
To printing y ^e Indian psalmes 18 ſheets 2 ^d 7 ^d Sheet	26	—	—
To printing M ^r Baxters Call q ^r 8 ſheets 50 ^d 7 ^d Sheet	20	—	—
To printing 9 Sheets of y ^e Psalter	9	—	—
To paym ^t of Cap ^r Gookines Bill for Woole	2	18	4
To years Board of M ^r Johnfon y ^e print ^r 1664	15	—	—

¹ This volume was printed in quarto.



To pack Thred and Dryfatts to pack y ^e Ind Bibles in	1	-5	-
To parch ^m to M ^r Gren ^e		8	-6
To pay ^m of Boat hyer for carrying & recarrying		1	-6
prayer and Bibles			-
To Binding and Clasping of 42 Bibles at 2 ^s -6 ^d 3 ^d bible	5	-5	-
To Sandry Bookes as 3 ^d Acco ^m	27	19	2
	<u>£123</u>	<u>07</u>	<u>10</u>
	£		

[Med]

Massachusetts
M^r Her. Ushers Account
with Confession^m
August 27th 1664

Mr. JOHN NOBLE read extracts from the following paper on the ancient Hue and Cry Acts of the Edwards and Elizabeth, showing the evolution from them of some modern criminal laws and processes.

A HUE AND CRY.

Occasionally, some old custom or practice, disused for years, crops out anew, changed and modified, but with reminiscences of its original features easily recognizable; or some old process of the law, long obsolete, seems, in some emergency, to have a brief and sudden resurrection. In the latter case, it is curious to see in how many points there is a resemblance and suggestion of the old process and even a reproduction of its leading characteristics, and at the same time to note what changes the spirit of a modern age makes in its methods and in its results. An instance of this appeared a short time ago in the Boston morning papers. Cutting down the long-extended narrative there given,—

“Such a man-hunt,” says one, “as occurred yesterday afternoon in Dorchester, has not been equalled in that District before, and it is doubtful if its like has many times been seen even in the City itself. For over a mile, nearly one hundred citizens and four policemen, together with two men with horse and buggy, chased a fleeing criminal, who was finally captured and carried to the station house.”

The discovery of the burglary, the offender taken in the act, the alarm, the response of a passer-by, the resistance emphasized by

pistol-shots, the flight, the pursuit, the shouts and cries, the windings and doublings of the fugitive, the growing crowd of foot and horse and officers of the law hanging upon his heels, the final capture, when the prisoner, safe and unharmed, is turned over to the authorities to await his trial under the laws of the land and in due course of impartial justice,—all are set out with the intensity of style and exuberance of detail that characterize the news reports of to-day. Here is a Hue and Cry, the remedy of primitive times, suddenly and spontaneously evolved out of quiet and matter-of-fact surroundings, by the emergencies of the occasion; and if we strip off the embellishments of the reporter, here are many or most of the external incidents and elements that belonged to it in mediæval times; but the essential differences are as marked as the similarities. It has seemed of some interest to consider this old process of the law in the shape it took in the thirteenth century, and in later times, down to the nineteenth, and, in a single case, in the early days of the Colony.

The process itself is one of the earliest known for the apprehension and trial of offenders. It existed under the earliest Common Law. Its origin is in the remotest periods of English history, but where or how is lost in the mists of unauthentic history and tradition. In fact, it sprang naturally and instinctively out of the conditions of an uncivilized people,—the first and most obvious method that occurs to primitive human nature. Its first recognition in the Statutes, or rather in statutes still extant, seems to have been at the very beginning of the reign of Edward I., but, according to the earliest English writers upon law, it existed long before that date. Coke speaks of its great antiquity, in his Institutes,¹ and a Note refers to —

“the Author of the Mirrore writing of the auncient laws before the Conquest” as mentioning “a hue and cry.”²

Glanville is also quoted³ and Bracton.⁴ The Note goes on to say: —

“And it is one of the articles of that auncient Court of the view of frankpledge (of whose antiquity we have spoken before) to enquire of hue and cries levied and not pursued” (Mag. Chart. c. 35), and,

¹ Coke's Institutes, ii. c. ix. N. (1). ³ Glanville, A. 14. c. 2.
² Mirrore, c. 1. § 8; c. 2. § 8.

⁴ Bracton, l. 8 fol. 121.

citing the old writers, he says, "All these Authorities were before the making of our Act, and therefore it was truly said, whoever said it, '*Perpetua Anglorum leges sancitum est.*' Of this hue and cry our Ancient Authors since our Statute have also written."¹

In his Third Institute, Coke gives an elaborate account, and devotes a whole chapter to it,—*De Hutesio et Clamore, Of Hue and Cry.*²

Blackstone's account of Hue and Cry, in its later and regulated form, is as full and clear as any:—

"There is yet another species of arrest, wherein both officers and private men are concerned, and that is upon an hue and cry raised upon a felony committed. An hue (from *auer*, to shout) and cry, *Hutesium et clamor*, is the old common law process of pursuing, with horn and with voice, all felons, and such as have dangerously wounded another. It is also mentioned by Statute Westm. 1. 3 Edward I. c. 9 and 4 Edw. I. *de officio coronatoris*. But the principal Statute, relative to this matter, is that of Winchester, 13 Edw. I. c. 1 & 4., which directs, that from thenceforth every country shall be so well kept, that immediately upon robberies and felonies committed, fresh suit shall be made from town to town, and from county to county; and that hue and cry shall be raised upon the felons, and they that keep the town shall follow with hue and cry, with all the town and the towns near; and so hue and cry shall be made from town to town, until they be taken and delivered to the Sheriff. And, that such hue and cry may more effectually be made, the hundred is bound by the same statute, c. 3. to answer for all robberies therein committed, unless they take the felon; which is the foundation of an action against the hundred, in case of any loss by robbery. By Stat. 27 Eliz. c. 18 no hue and cry is sufficient unless made with both horsemen and footmen. And by Stat. Geo. II. c. 16 the constable or like officer, refusing or neglecting to make hue and cry, forfeits £1.; and the whole vill or district is still in strictness liable to be amerced, according to the law of Alfred, if any felony be committed therein and the felon escapes. . . . Hue and cry may be raised either by precept of a justice of the peace, or by a peace officer, or by any private man that knows of a felony. The party raising it must acquaint the constable of the vill with all the circumstances which he knows of the felony, and the person of the felon; and thereupon the constable is to search his own town, and raise all the neighboring villa,

¹ Britton, fol. 18, 20; Flota, lib. 1 ca. 24.

² Coke's Institutes, iii. ch. 52.

and make pursuit with horse and foot; and in the prosecution of such hue and cry the constable and his attendants have the same powers, protection, and indemnification, as if acting under the warrant of a justice of the peace. But if a man wantonly or maliciously raises an hue and cry, without cause, he shall be severely punished as a disturber of the public peace."¹

The great antiquity and the primitive forms of this process of the law appear from the early writers cited in Coke. The *Mirrour of Justices*, "a book of great authority and of the earliest, though uncertain, date,"² after some account "Of the first constitutions made by the Ancient Kings," says:—

"It was ordained, that every one of the age of fourteen years and above should be ready to kill mortal offenders in their notorious sins, or to follow them from town to town with hue and cry; and if they could not kill them, the offenders to be put in exigeant, and outlawed or banished. And that none should be outlawed but for a mortal offence, and in no other county but where he committed the offence."³

"And if any one fly or make resistance, and will not answer the law, it is lawful for every one to kill him, if he cannot otherwise apprehend him. And Bermonde awarded that all goods of those that fled should remain forfeit to the King, saving to every one his right, although that afterwards he yield himself to the peace."

And Iselgrun said, that "he is no syer who appeareth in judgment before he be outlawed."⁴

"Of these first assemblies it was also ordained, that every hundred do make a common meeting once in the year, not only of the freeholders

¹ *Commentaries on the Laws of England*, book iv. c. 21. 4.

² This work is supposed by Coke to have been written, much of it, before the Conquest, and is referred to by Reeves in his *History of the English Law* as "compiled by Horne, under Edw. II. from some work of that kind, and legal documents in the Anglo-Saxon times" (*Kent's Commentaries*, i. 560, note 9).

³ *Miroir Des Justices vel Speculum Justiciariorum factum per Andrewm Horne, London, Gray's Inn Gate, 1642.*

⁴ *Ordonne fait que checoun del Age de xiii Ans & autre ne appretat de mortels pecheurs occire en leur peches notoires, ou de les envier d'ville en ville a hue et cry,* etc. (C. I. § 3. 18).

The *Mirrour of Justices*, Ed. Andrew Horne, London, M.DCCLXVIII. Translated into English by W. H. [William Hughes] of Gray's Inn, Eng. (chap. i. sect. 3. p. 10).

⁵ *Ibid. chap. i. sect. 18. p. 44.* Of the office of the Coroners.

but of all the hundred, strangers and denizens . . . to enquire of the points aforesaid, and of the Articles following, . . ."

The Articles are these. "By the oaths you have taken, you shall declare . . . Of all bloodsheds, of hue and cry wrongfully levied, or rightfully levied and not duly pursued, and of the names of the pursuers; of all mortal offences, and of their kinds, and as well of the principals as of the accessories," and some thirty other Articles.¹

"The law requireth that offenders in case of death have not such mitigation or favour that they be brought or summoned, or distrained to appear in judgment by taking of their cattle, if the offenders be known, and notorious, and the plaintiff pursue them so soon as he may. And if any fly for such offence, then according to the Statute of Winchester he was to be followed with hue and cry, with horn and voice, so that all those of one town who can are to follow the felon to the next town; and if any such felon be attaint and convict of the felony, let him be killed if he cannot be otherwise apprehended. But it is otherwise in felonies not known, for it is not lawful to kill the offender without his answer, if he may be taken alive."² Then follow provisions in case of trial held.

Glanville, Chief-Justiciary in the reign of Henry II., in his *Tractatus de Legibus Angliae*, sometimes said to be "the most ancient book extant upon the laws and customs of England," cited and praised by two centuries of the most eminent English lawyers, also refers to the old process:—

"But there are two species of Homicide. The first is called Murder, which is secretly perpetrated, — no one seeing — no one knowing of it, save the person committing it, and his accomplices, so that Hue and Cry cannot be presently made after the offenders, as ordained by the Statute upon this Subject . . . A person accused of Homicide is sometimes compelled to undergo the legal Purgation, if he was taken in flight by a Crowd pursuing him, and this be regularly proved in Court by a Jury of the County."³

Bacon, whom Reeves calls "the father of the English Law," in his *De Legibus et Consuetudinibus Angliae*, in the time of Henry III., after setting forth the due course of preliminary proceedings

¹ *The Mirror of Justice*, &c., chap. I. sect. 17. p. 52, Of views of Frankpledge.

² *Ibid.* chap. II. sect. 6. p. 66, Of Attachments.

³ Glanville (Bamner's edition, 1812), book 14. chap. 2. pp. 254-257.

by "the Justices itinerant," — beginning with the pleas of the crown; the reading of the writs, which give them authority and power to make an *hue*; the setting out the cause of their coming, the utility of their itineration, the advantage if peace is observed, the violation of the King's peace and justice by murderers and robbers and burglars, and his commands to his faithful subjects, — directs that the justices should retire, and have a consultation in turns with four or six or more of the greater men of the county, and explain to them how —

"It has been provided by the King and by his Counsel, that all as well Knights as others, who are of fifteen years and more, ought to swear that they will not harbour outlaws, murderers, robbers or burglars, nor confederates with them nor their harbourers, and if they should know of any such, they will cause them to be attacked and declare it to the viscount [sheriff] and his bailiffs, and if they shall hear hue and cry respecting such people, immediately on hearing the cry they shall follow with their household and the men of their land. Upon which it may be noted, that if any one has committed a felony and has been forthwith captured, hue and cry having been raised, the pursuit shall cease. And hence if a man shall be suffocated by misfortune or drowned, and be dead in any other manner or be slain, let hue be raised forthwith, but the pursuit ought not to be carried on from land to land, from vill to vill, when the malefactor shall have been taken, that is to *dare*. And afterwards let them lead a track along their own land, and at the end of their land they shall show it to the lords of the neighbouring lands, and so that pursuit be made from land to land with all diligence, until the Malefactors are captured, and that there be no delay in making the track unless an impediment intervene through night coming on, or for some other reasonable cause, and that they shall arrest, as far as may be in their power, those whom they regard as suspected without waiting for the mandate of the justice or the viscount [sheriff], and that what they shall have done thereupon they shall certify to the justices or the viscount.¹

"But because there are some persons, who forthwith betake themselves to flight after a felony and cannot be seized, let the hue be raised after them, from vill to vill, until the malefactors are captured, otherwise let

¹ *De Legibus et Consuetudinibus Angliae. Tractatus Secundus Libri Tertii. De Corona*, chap. I. l. 115, 116, "a dicto regis & consilie sue sit primum, quod omnes tam milites, quam alii esto" (Twiss's edition, London, 1879), II. 245-257.

the whole district be amerced to the king. But how the pursuit ought to be made, each country has its own mode, and let the hue be raised in that same mode."¹

Similarly, we find in Britton, in the reign of Edward I., who Coke says was Bishop of Hereford and of profound judgment in the Common Law, but who has also been spoken of as a mere appendage of Bracton :—

" And for the maintaining of peace, we will that when a felony is committed, every one be ready to pursue and arrest the felon, according to our Statutes of Winchester, with the company of horns and voices from township to township, until they are either taken or have been pursued as far as the chief town of the county or franchise. We will also, that every one who flies from our peace forfeit his chattels to us for such flight, if he be suspected of felony, although he be afterwards acquitted of the principal fact. And if it be murder or other felony concerning the death of a man, let such felony be presented at the next county court by one or more townships, and by the first finder and the kindred of the person killed. . . ." ²

" If any man be found killed, and another be found near him with the knife or other weapon in his hand all bloody, wherewith he killed him, the coroner shall be presently fetched, and in his presence the felon shall, upon the testimony of those who saw the felony done, be judged to death. The like when a person is found in a house, or other place where one shall be found killed, and the person found alive is neither hurt nor wounded, and has not raised the hue and cry, and has not charged any with the felony, and shall not be able to do so." ³

Fleta, likewise, in the same reign gives various provisions made for prompt and effective pursuit and arrest of felons; for punishment in case of default, and of official misfeasance; for public proclamations to secure pursuit and investigation and apprehension; for the responsibility of the hundreds; for the use of hue

¹ *De Legibus et Consuetudinibus Angliae*, etc., chap. x. f. 124—ii. 304.

² Britton, liv. i. c. xiii. 2. fol. 20.—*De Forbanz, Of Outlaws* (Oxford edition, 1865), i. 49, 50. From the first printed edition of Britton, in Black Letter, but without date or place of publication on the title-page, I make this extract from the French text :—

" De Banays . . . et voies per la puce moytaine : que tous soient prutes de les felonies ouer et auantur felonies les estatutes de Wyntester," etc.

³ *Abel. liv. i. c. vi. 4. fol. 14a.*

and cry in the case of suspects ; for requiring all between the ages of fifteen and sixty to have in their houses a due equipment of arms according to their estate and condition, with considerable minuteness of detail, and for stated inspection of the same ; for liability for default in such equipment or failure in vigilance or in pursuit ; and for the raising of hue and cry and its prosecution in the case of felonies. Furthermore, in the case of trials, are set out the presumptions arising from presence or other circumstances at the scene of the offence, or the failure to raise the cry.¹

The original process, by the force of statute and the subduing influence of advancing society, was brought within regulated and fixed limits :—

" For levying hue and cry," says Burn, " although it is a good course to have the warrant of a justice of the peace, when time will permit, in order to prevent causeless hue and cry; yet this by no means seems necessary, nor is it always convenient; for the felon may escape before the warrant be obtained; and hue and cry was part of the law before justices of the peace were first instituted (2 Hale 99). . . . If the person against whom the hue and cry is raised be not found in the constablewick, then the constable shall give notice to the next constable, and he to the next, until the offender be found, or till they come to the sea-side. And this was the law before the Conquest . . . Though no person be named or described . . . all that can be done is for those that pursue the hue and cry, to take such persons as they have probable ground to suspect." Doors may be broken if the fugitive has taken refuge within. Measures are summary and effective. " If he cannot be otherwise taken, he may be killed"—And further :—" it seems that they who are taken upon fresh hue and cry are not bailable." And they which levy not hue and cry, or pursue not upon hue and cry, may be indicted, fined and imprisoned.²

The various statutes enacted, both those still extant and the earlier, were only the attempt, on the one hand, to bring an existing crude but effective process into some legitimate and recognized shape, and to regulate and limit its methods and powers, already becoming dangerous ; and, on the other hand, to secure prompt

¹ Fleta (editio secunda, Londini, 1665) : *De Facis conservations*, cap. 24. p. 24; *De Fugitivis*, cap. 27. p. 40; *De Appellis homicidii*, cap. 31. p. 47; *De defensione Appelli*, cap. 34. p. 49.

² Burn's *Justice of the Peace and Parish Officer*, ii. p. 1366.

and effective pursuit of offenders, the due enforcement of the laws, and the legal responsibility of magistrates and communities.

Pollock and Maitland give a fresh and spirited account of the old process, in treating of the processes of the law, which "vary in stringency from the polite summons to the decree of outlawry." It is spoken of as "an offshoot of outlawry, . . . a species of summary justice that was still useful in the 18th Century." A vivid picture follows:—

"When a felony is committed, the hue and cry (*Autesium et clamor*) should be raised. If, for example, one comes upon a dead body and omits to raise the hue, one commits an amerciable offence, besides laying oneself open to ugly suspicions. Possibly the proper cry is 'Out!' 'Out!'—And therefore it is *utesium* or *utesium*.¹ The neighbours should turn out with the bows, arrows, knives, that they are bound to keep; and besides much shouting there will be horn blowing; the 'hue' will be sounded from vill to vill. Now if a man is overtaken by hue and cry while he has still the signs of his crime, he will have short shrift; should he make any resistance, he will be cut down. But even if he submits to capture, his fate is already decided. . . . He will be brought before some court (like enough it is a court hurriedly summoned for the purpose); and without being allowed to say one word in self defence, he will be promptly hanged, beheaded or precipitated from a cliff. . . . In the 13th century this barbaric justice is being brought under control. We can see that the royal judges do not much like it; though truth to tell, it is ridding England of more malefactors than the King's Courts can hang. The old rule still held good that if by hue and cry a man was captured when he was still in seisin of his crime, . . . and he was brought before a court which was competent to deal with such cases, there was no need for any accusation against him, for any appeal or any indictment, and what is more, he could not be heard to say that he was innocent, he could not claim any sort or form of trial. Even royal judges, if such a case is brought before them, act upon this rule. . . . Even in much later days, if a man was taken 'with the mainour' (*cum manuopere*), though he was suffered or compelled to submit the question of his guilt to a jury, he could be put on his trial without any appeal or any indictment. There is hardly room for any doubt that this process had its origin in days when the criminal taken in the act was *ipso facto* an outlaw. He is not entitled to any 'law,' not even to that sort of 'law,' which we allow to noble

¹ Brunner, D. R. G. (1887 et seq.), ii. 482, is referred to as to the various Cribs.

beasts of the chase. Even when the process is being brought within some legal limits, this old idea survives. If there must be talk of proof, what has to be proved is, not that the man is guilty of murder, but that he was taken red-handed by hue and cry. Outlawry was still the law's ultimate weapon."¹

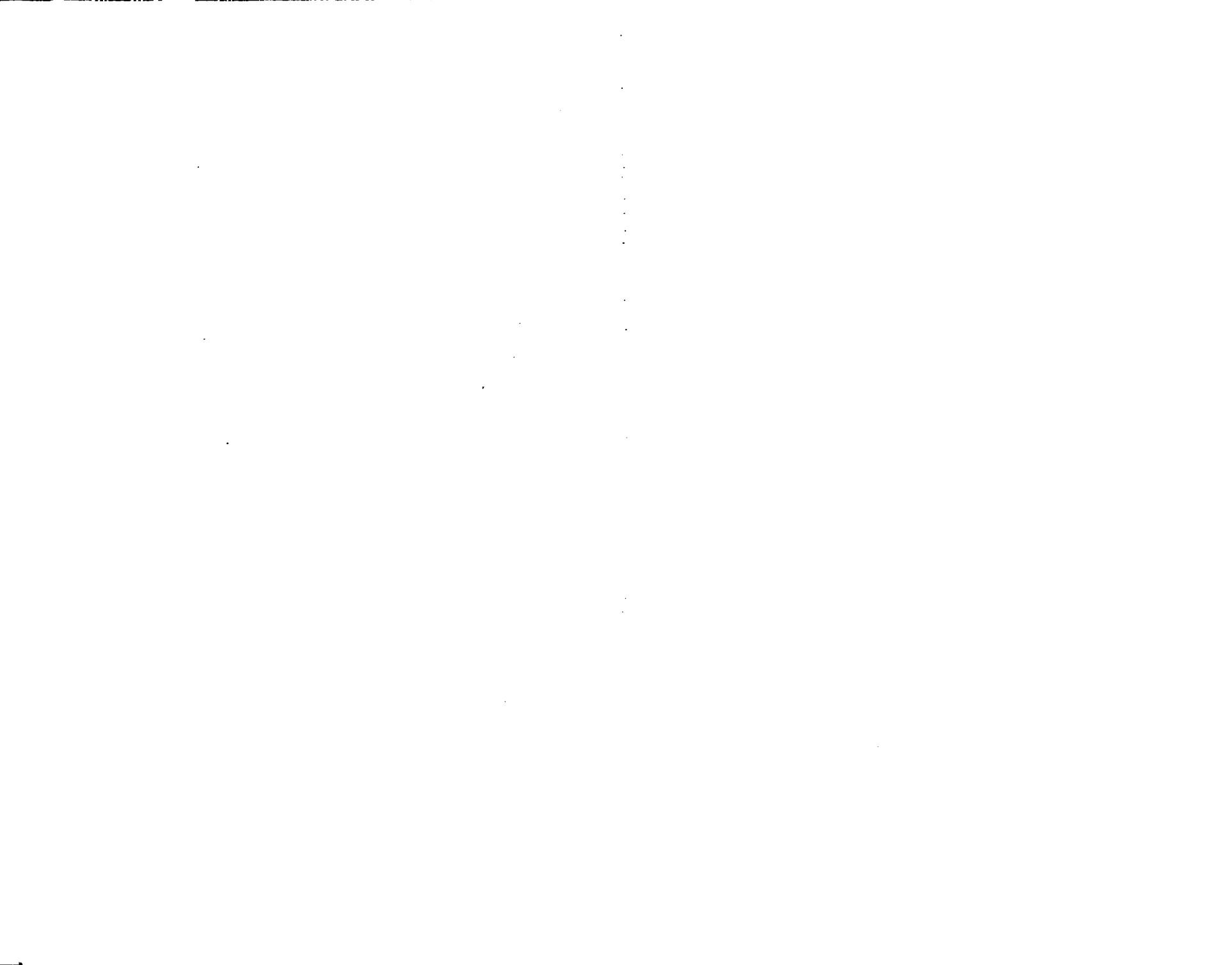
Reeves gives some account of the process and a very clear summary of the Statutes, their occasion, intent, and effect:—

The Statute of Winchester contained various provisions for enforcing the ancient police and ordained various new regulations. It was occasioned by the startling increase within then recent years of the graver crimes, and the slackness of the administration of subsisting laws. Jurors were partial or interested or influenced, there was negligent and even wilful failure to indict, and an equal failure to convict if indicted.

This Statute made special provisions as to the old process of hue and cry. It directed that the *Autesium et clamor* should be made solemnly in all counties and hundreds and districts, at markets and fairs, and wherever a concourse of people was to be expected so that none might excuse himself from ignorance, and none might escape for want of fresh suit from town to town. This hue and cry, formally started, and not the immediate and instinctive pursuit of the criminal surprised on the spot of his crime, is plainly an evolution of the original. This early statute and the later statutes down to comparatively modern times seem all to be based on the ancient institutions of the hundreds, and of the frank pledge, making the hundred responsible. There is a case under the Act in the Year Book of Edward II. fol. 539. To ensure promptness and efficiency districts were made responsible for the crimes committed within them, and were held to make good the damages done. Precautions were to be had against lodging or entertaining suspicious persons or even strangers; watches were to be kept, with authority to arrest; and, where resistance was offered to such arrest, provision was made for levying hue and cry, and following it from town to town till the fugitive was run down and arrested.

In the reign of Elizabeth, Hue and Cry stood upon the old Statute of Winchester (13 Edw. I.) and a later one (28 Edw. III.). Proceedings were becoming more frequent under the provisions of existing laws, and some of these provisions, first adopted to secure greater vigilance, energy and efficiency, were beginning to bear with hardship on the hundreds, and the corporate liability and responsibility had

¹ Pollock and Maitland's History of English Law, II. 578, 579.



brought about neglect and want of diligence, especially in the case of robberies and injuries to property, on the part of the person injured. He took his remedy in the easiest and cheapest way. To remedy this, the Statute 27 Elizabeth c. 13 made the hundred liable for only one moiety of the damages, wherever there was negligence on the part of the sufferer, or default of fresh suit, after hue and cry was raised. Under the old Statutes, the recovery was practically or usually against one or only a few of the inhabitants; and, in general effect, the Statute was in check and restraint of the process. It was on the principle of the old Statutes, but modified the procedure; now limitations of the actions against the hundred were fixed, and the liability affected by various conditions.¹

The modern statutes of England,—those of 29 Charles II., 6 and 9 George I., and 8 George II.,—touching liability for damage done by rioters, and in similar cases, all go back for their principle of responsibility to the old statutes of Hue and Cry.

Sir Mathew Hale devotes a chapter to the subject:—

"Hue and cry is the old common law process after felonies . . . And this hath received great countenance and authority by several acts of parliament. . . .

"By the Statute of Westm. I. cap. 9; . . . that all be ready and apparelled at the summons of the Sheriff & a cry *de pege* to pursue and arrest felons as well within franchises as without; . . ."

"By the Statute of 4 E. I. . . . Hue and cry shall be levied for all murders, burcharies, men-slain, or in peril to be slain, as other-where is used in England, and all shall follow the hue and steps as near as they can; and he that doth not, and is convict thereof, shall be attached to be before the justices in Eyre. . . ."

"By the Statute of Winston, cap. 1 . . . From henceforth every country shall be so well kept, that immediately upon robberies and felonies committed fresh suit shall be made from town to town and from country to country: and cap. 4 . . . and such as keep the town shall follow with hue and cry with all the town and the towns near; and so hue and cry shall be made from town to town, until they are taken and delivered to the Sheriff; and for arrestment of such Strangers none shall be punished."

"And this is in truth but the antient law." He then sets out what is

¹ This and the two preceding paragraphs of the text constitute a condensed summary of Reeve's account of the process, partly in his own words, but mainly in my own. See his History of the English Law (Finlæon's edition), especially i. chap. viii. 406; ii. chap. x. 121-128; and iii. chap. xxiv. 712 et seq.

proper but not essential, that "it is a good course to have a justice of peace to direct his warrant for raising hue and cry . . . yet it is neither of absolute necessity, nor sometimes convenient;" and that "it is most adviseable, that the constable be called to this action. . . . Yet upon a . . . felony committed, hue and cry may be raised by the country in the absence of the Constable." The consequences then appear "if hue and cry be raised without cause."

Then follow the five points that "are considerable."

I. "By whom it is to be levied:—as well by an officer of justice as by the precept of a justice of the peace, . . . or . . . by any private person that is robbed, or knows of any felony."

II. "Touching the Manner of it: . . . diverse according to a variety of circumstances,"—taking up; the notice and reasonable assurance of the felony; . . . "the name of him that did it," if known; if not known, the means of identification, and failing all plain indications, a request upon the constable for hue and cry after suspects, as "many circumstances may *ex post facto* be useful for discovering a malefactor, which cannot be at first found."

III. "In what manner . . . to be pursued: . . . The Constable . . . to make search in his own vill; . . . to raise all the neighbouring vills next about; . . . to be pursued with horse and foot."

IV. "What may be done in pursuance of a hue and cry levied: . . . once raised and levied upon supposal of a felony committed, tho in truth there was no felony committed, yet those that pursue hue and cry may arrest and proceed, as if so be a felony had been really committed." The justification of acts done by those who "pursue the hue and cry," and the liability of "the raiser" under certain circumstances are given; and also the extent and limitation of the acts that may be done and,—

V. "How the neglect of the pursuit of hue and cry is to be punished: . . . indicted, fined and imprisoned."¹

"If a hue and cry be levied upon a felony, and come to the town, the Constable and those of the town are bound to apprehend the felon if in the town, or if not in the town, then to follow the hue and cry; otherwise they are punishable on indictment."²

In East it is said:—

"*A fortiori*, if hue and cry be levied, all who join in the pursuit are under the same protection of the law . . . Although no warrant of a

¹ Hale's Pleas of the Crown, ii. 28-104.

² *Ibid.* i. 508.

justice of the peace to raise hue and cry, nor any constable in the pursuit, yet the hue and cry was a good warrant in law for the pursuers to apprehend the felons, and therefore the killing of any of the pursuers was murder."¹

The same doctrine is held in Jackson's case² and in numerous United States cases.

There are four cases, reported at length, tried A.D. 1221-1231, under a statute older than that of Edward I. and not extant in the time of Coke. They are of great interest, — an interest not lessened by the quaint Latin of the Reports.³

In England the process and the laws governing it have been only matters of curious legal history since the enactment of the statutes 7 and 8 George IV., in 1827 and 1828; but some of the underlying principles of the old process and of the laws relating thereto, still live and are the basis of some modern statutes as to municipal liability in certain cases, as well as the ground of not a few judicial decisions. Chief-Judge Doe of New Hampshire, in deciding a case in 1864, referred to the old law of Hue and Cry and the liability of the Hundred, for an analogy;⁴ and some of its doctrines were invoked — not expressly, but in spirit — in the discussion of the responsibility of Spain for the blowing up of the Maine.

In addition to the authorities already quoted or cited, accounts of this old Common Law proceeding, of its summary justice, its history, the various provisions of law from time to time enacted, the occasion, the mode, and the consequences, are, of course, to be found in most English works on Criminal Law, in the Pleas of the Crown, and in the various Commentaries on the laws of England.⁵

¹ East's *Pleas of the Crown*, i. 298, 299.

² Rex v. Jackson et al., Newgate, Lent Vac. 26 Car. II. as cited in East's *P. C.* i. 298 and in Hale's *P. C.* ii. 99. Lent Vacation, anno Car. II. 2d.

³ Bracton's *Note Book* — A collection of Cases decided in the King's Courts during the reign of Henry III. (Maitland's edition, London, 1887), Nos. 662, 1474, 1607, 1711.

⁴ Underhill v. Manchester, 45 New Hampshire Reports, 221.

⁵ Hawkins's *Pleas of the Crown*, ii. chap. 12 § 5, c. 15 § 41; Stephen's *Commentaries on the Laws of England*, iv. 348; Broom and Hadley's *Commentaries on the Laws of England* (American edition), ii. 581; Comyn's *Digest* (London, 1822), iv. 488-490; Bacon's *Abridgment* (1853), iv. 691-720; Brooke's

Upon this side of the Atlantic, this old process seems to have had an occasional use, as appears by the Records and Files of Court. The Colonists of the Massachusetts Bay brought with them the Common Law of England as it then existed, and all those ideas of law and legal procedure which they had acquired as Englishmen. The only other source of law which they recognized was the Holy Scriptures, and especially the Mosaic Code, as interpreted by themselves or as embodied in legislative enactments; and in the old Jewish law they might easily find suggestions of this procedure in its most primitive form, and consequent satisfaction therein.

The procedure was in existence here in 1646, as appears by the Act of 4 November: —

"If any officer or other shall refuse to do their best endeav' in raising & pescuting hue & cryes by foote, &c, if neede be, by horse, after each as have committed capitall crymes, they shall forfeite, for ev'y offence, to y' common treasury, forty shillings, such hues & cryes as be allowble by lawe."¹

Here seems to be a recognition of its existence and authorization, and at the same time of limitations as to its use.

Among the Early Court Files of Suffolk is an original draft of an Order of the General Court in 1660, regulating and settling the charges in such cases: —

"Boston 9th. 4. 60

for the Regulating and Setting the charge of pescution of Hue & cryea. It's ordered that what shall arise by occasion of escape from the Countries prison or flight from Authoritie to Avoid the Same shall be payed by the Treasurer of the Countrey And such as arise by fleeing from any of our Countie prisons or to escape any of them shall be defrayed by the treasurer of that Countie wher the occasion arise And such peons as perte Hue & cryes vpon thier own pticular occasion shall bearre all the charge arising there from provided due accounts be made by such as demand paye

Abridgment, *La Soc. Part 59*, 8.; Wood's *Institutes*, book iii. c. 1, 280-288, book iv. c. 5, 638; Dalton's *Countray Justice* (London, MDCCXC), chap. liv. v. 2d. p. 114, chap. lxxxiv. v. 46. p. 314, and chap. cxii. v. 109. p. 408; *Fitz. Coron.*; Cro. Eli. 654; Crompt. 178.

¹ *Massachusetts Colony Records*, ii. 182.



The Deputies have past this in reference to y^e Consent of o^f Hon^d
Magistrates

THOMAS SAVAGE speaker

Consented to by y^e magists

EDW. RAWSON Secr."

[Endorsed] "pecution of
Hue & Cryes
p Curiam
Entr."¹

This appears set out in the Records of the General Court, where, however, the marginal date is given 30 May 1660.²

There was a case of Hue and Cry in the frontier towns, along the border of Maine, in the year 1655. A group of five papers has outlived the accidents and exposures of two hundred and fifty years and is now among the Suffolk Court Files. Though evidently only a portion of what once made up the case, they are enough to tell the story, to show what the proceeding was in those days, and to illustrate some incidents that belonged to the process from its first regulation by the laws of England.

The case, briefly stated, was this:—a supposed murder, a suspected perpetrator, an application to the magistrates thereupon, the levy by them of a Hue and Cry, the action under it, the supposed victim later turning up alive, the aggrieved suspect seeking redress, the suit against the offending magistrate, the magistrate, in fear of the issue at law, turning for relief to the Great and General Court—and not in vain.

The five papers, which are to be looked to for the life and color of the account, comprise the original Petition of the Magistrate, addressed to the General Court, which, though latest in date, comes logically first in its succinct presentation of the whole case, and four other original papers, evidently used at that hearing. In the cold, expressionless monotony of a copy, however literal and exact, there is lacking all the impressive suggestion which the originals convey. There is expression on the very face of the

¹ Suffolk Court Files, iii. no. 374.

² Massachusetts Colony Records, iv. (Part I) 418. As to the illusive character of these marginal dates, see Mr. Upham's remarks, ante, p. 148.

originals. In the distinctive chirography, the individualities of style, the quaint phraseology, and the vagaries of spelling, the actors in the drama seem projected before us. Some curious little touches of human nature come out in the simple, straightforward narrative, so wholly devoid of legal formality and precision. None of these papers appear in the Colony Records, where, as is usual in such matters, only the final action of the General Court upon the subject is compactly given in the official account. All the papers, however, bear the endorsement of "Entered," and the attestation of the respective officials,—William Torrey, Clerk of the Deputies, and Edward Rawson, Secretary of the Magistrates, each in his own handwriting.

The first paper—a somewhat pathetic appeal of a country magistrate, frightened by the unexpected operation of the engine he has set in motion, in which he gives the story of what he did and why he did it, claiming that, although but an humble "Commissioner to end small causes," he was for the time being the vice-gerent of the Government, and that its authority and majesty were assailed in his person—is the Petition or Complaint:—

I.

"To y^e honored Gen^{al} Court
assembled at Boston

The Complaint of Richard Hitchcock
of Saaco

Whereas yo^r complainant was chosen & sworne a Commissioner³ to end small causes &c. in that place according to yo^r lawe there came unto me & Robert Booth my fellow Commission^r for a huy & cry; one Thomas Redding to search after Thomas warner vpon suspition of murthering the sonne of y^r said Redding. which according to our Trust in our place

³ The authority and duties of these Commissioners appear in an Order of the Commissioners of the General Court for settling the government of Saaco, under date of 7 September, 1653:—

"three men approved by the County Courts, from yeare to yeare, to end small causes, as other the townships in the jurisdiction hath where no magistrate is, according to lawe. . . . any two of them, are and shallbe impowered and invested with full power and authoritie, as a magistrate, to keape the peace, . . . to examine offenders, to commit to prison, valesce baile be given . . . to bjunde offenders to the peace or good behavior . . . to administer othes. . . . Also mariage shallbe solemnized by any of the commissioners, according to lawe." (Massachusetts Colony Records, iv. (Part I) 162, 163.)

(we concive) we did grant Notwithstanding the said warner hath arrested me to answer his accou at next County Court here at Boston about this business which yo' Complainant concives to be altogether illegall & dishon'ble to yo' wor^m Authority & greatly to our damage dwelling soe farr off from this place.

My humble request is that yo' wor^m wilbe pleased to heare y^e case & see shall I not doubt of your righteous & speedy ending thereof.

the mark of

R

RICHARD Hitchcock¹

Concived to
by the deputyes

Wm. Torky Cleric

The Magis^m have granted the pet^tone^m Request viz a hearing of y^e cause y^e warner haue notice thereof w^m all speed [if] theire bretheren the deput^m Consent hereto.
EDW. RAWSON Secret."

[Endorsed] "Hichcocks peticon
p Curiam
entred²"

The second paper is the Deposition of the Constable to whom the Hue and Cry was issued, curiously combining in effect a return, an apology, and an advertisement:—

II.

"Where as [Joh]n bush A Constab[e] [of] Wells Received a Hue and C[ry] under the hands of [Robert] Booth & Rich: Hith[cock] Commissioner[s] [of] Saco for the Apprehending the body of Tho: Warriner³ in suspicion of Murder, I the above said John Bush⁴ hauing just

¹ Richard Hitchcock was an active man in his own town, one of the inhabitants acknowledging themselves subject to the Government of the Massachusetts Bay in New England, and made a freeman at Saco, 5 July, 1653. He was "appointed and authorized as a sargent, to exercise the scoldjery at Saco," and was also a Deputy from Saco, in 1660 (Massachusetts Colony Records, iv. (Part I.) 162, 163, 417.)

² Suffolk Court Files, ii. No. 217.

³ Thomas Warner of Cape Porpoise was made a freeman at Wells 5 July, 1653, when Cape Porpoise was made "a township by itselife." (Massachusetts Colony Records, iv. (Part I.) 164.)

⁴ John Bush was one of several inhabitants of Wells who, apparently with some reluctance, acknowledged themselves subject to the jurisdiction of the Massachusetts Bay, and were made freemen 5 July, 1653, on which day Wells was made "a township by itselife." (Ibid. pp. 156, 159.)

intelligence that it was wrongfully sent forth, and upon that the Hue and Cry stop in my hands and therefore I w^m the Rest of our Neighbours doth Apprehend that Tho: Warriner⁵ was very much damnyfied and discredited see I leane w^m my best Respects to them whome this may Concerne I rest

You^m at command in any
service John Bush
Consta: of wells

Wells this 29th of
first in 55
witness

JOSEPH BOLLES Cler [of the writs]⁶:

[Endorsed] " Jn^m Bush
Constable of
Wells etc."

The next paper is the Certificate of the other magistrate who joined with Hitchcock in issuing the Hue and Cry and who, on later developments, became somewhat apprehensive about his connection with the affair:—⁷

III.

"When tiddings came to me that Thomas Redings sonn was a lie I went to Richard Hichcox on porpos to haue better securtye about y^e hue & cry he had procured of vs and Hichcox maid small account of my motion & said M^r Thomas Kimble & John Learanc will certifie it at Boston & ther needs no more truble this doe I testifie for a truth

ROB BOOTH Comis"

[Endorsed] "Booths Certific^m"

⁵ Joseph Bolles was of those who, "Att Wells, 4th of July 1663," acknowledged themselves subject in like manner and were "granted to be freemen." He "was appointed clark of the writs," at the same time. (Massachusetts Colony Records, iv. (Part I.) 158, 160.)

⁶ Robert Booth, made a freeman at Saco 5 July, 1653, was evidently a man of versatility as well as of substance. He was a Selectman, a Commissioner on various occasions of public concern, and one of the three Commissioners "to and all smale causes." He was also invested with another special and conspicuous function,—Saco being "destitute of a good minister, . . . in the meane tyme that their peace maybe preserved . . . Robert Booth shall haue libertie to exercise his gifts for the edification of the people there." He was a Deputy from Saco in 1660. (Ibid. pp. 162, 163, 214, 233, 366, 421.)

The fourth paper is a Certificate or Deposition of the man whose son was supposed to have been murdered and who made the demand for the process: —

IV.

" Know all men y^t I Thomas Reding¹ and Eliza his wife coming to Rich Hitchcock for a hue and cry in y^t case of my sonn I said can goodman Booth do it by him selfe Hitchcock said bid him set my hand to it for I haue gien him order so to doe for murther must not be hid

June 16: 55

[Signature] ROBERT WHITE
 JOHN *[Signature]* FANDERCOE } *witnesses*

Then follow the Depositions of John West and his wife, apparently two of the neighbors: —

V.

" The deposition of John West² 8 month 11: day 1655 this deponent saith y^t he had Eliza Reding say divers times; y^t his husband Thomas Reding should not haue gott a hue & Cry of Booth but y^t Richard Hitchcock stood his friend & further this deponent saith not Edie y^t wife of John West affirmeth to the same above written upon her oath."

taken before me

ROB BOOTH Commissioner"

[Endorsed] " Jn^r west
deposit"

At the sitting begun 24 October, 1655, the General Court granted a hearing to the Petitioner with this result: —

" In answer to the petition of M^r Richard Hitchcock, after the Courts had fully heard the case betwixt him & Thomas Warner, the Court determined, that notwithstanding what evidence Thomas Warner pro-

¹ Thomas Redding was made a freeman at Saco 5 July, 1653, when Saco was made "a township by itself." (Massachusetts Colony Records, iv. (Part I.) 162.)

² West was made a freeman at Saco, 5 July, 1653, and was appointed a Commissioner "to and all small causes" and one of the Selectmen (*Ibid.* pp. 162, 166).

duced in the case, the said Hitchcock was free from blame in granting the hue & cry, and that he should be allowed thirty shillings costs by the said Warner."³

While absolving the Magistrate, the Court also made some compensation to the sufferer, as appears by the order of 18 November, 1655: —

" The Court, on a full hearing of the case of Thomas Warner in reference to his suffering by imprisonment for suspicion of murder, doe judg meete to order, that he be allowed five pounds out of the common treasury, and referr him to make his full reparation on Tho Redding, y^t accused him."⁴

In the course of this hearing, Warner seems to have got into some difficulty with the Deputy-Governor, as appears by this entry in the Records: —

" Thomas Warner acknowledged before the whole Courte, mett together, that he had wrongfully charged the honnored Deputy Govenr^r in saying the letter he had produced was not the letter he committed him to prison by, for which he was sorry. The Court accepted his acknowledgement."⁵

Thus the case concluded, apparently to the satisfaction of all parties, except, possibly, Thomas Redding, the unfortunate source of all the trouble, who, moved, perhaps, alike by parental affection and a desire to see the law of the land carried out, had instigated the proceeding.

A recognition of the existence of this process under the law in the early days of the Province appears also in 1692-3, in an Act in which, among the powers given to Justices of the Peace, is that to "make out hue and crys after runaway servants, thieves and other criminals."⁶

Here, as in England, this old process, barbarous and instinctive in its origin, savage, though effective, in its later state, systematized and transformed by statute, has long been obsolete. Occasionally, however, even to-day, an offshoot or a illegitimate descendant may be found, with all the original severity unmitigated,

¹ Massachusetts Colony Records, iv. (Part I.) 245.

² *Ibid.* p. 251.

³ *Ibid.* p. 250.

⁴ Province Laws (Standard edition), Acts 1692-3, ch. 18 § 6, l. 52.

and with even exaggerated barbarity, claiming some justification where law may be in abeyance or powerless, and, possibly, offering some show of defence or excuse where perverted legal ingenuity is expected to defeat deserved conviction, or weak commiseration to frustrate the execution of justice under law.

Messrs. CHARLES KNOWLES BOLTON of Brookline, ARTHUR THEODORE LYMAN of Waltham, and JAMES LYMAN WHITNEY of Cambridge, were elected Resident Members; and the Hon. JOSHUA LAWRENCE CHAMBERLAIN, LL.D., of Brunswick, Maine, FRANKLIN BOWDITCH DEXTER, A.M., of New Haven, Connecticut, and the Hon. JOHN ANDREW PETERS, LL.D., of Bangor, Maine, Corresponding Members.

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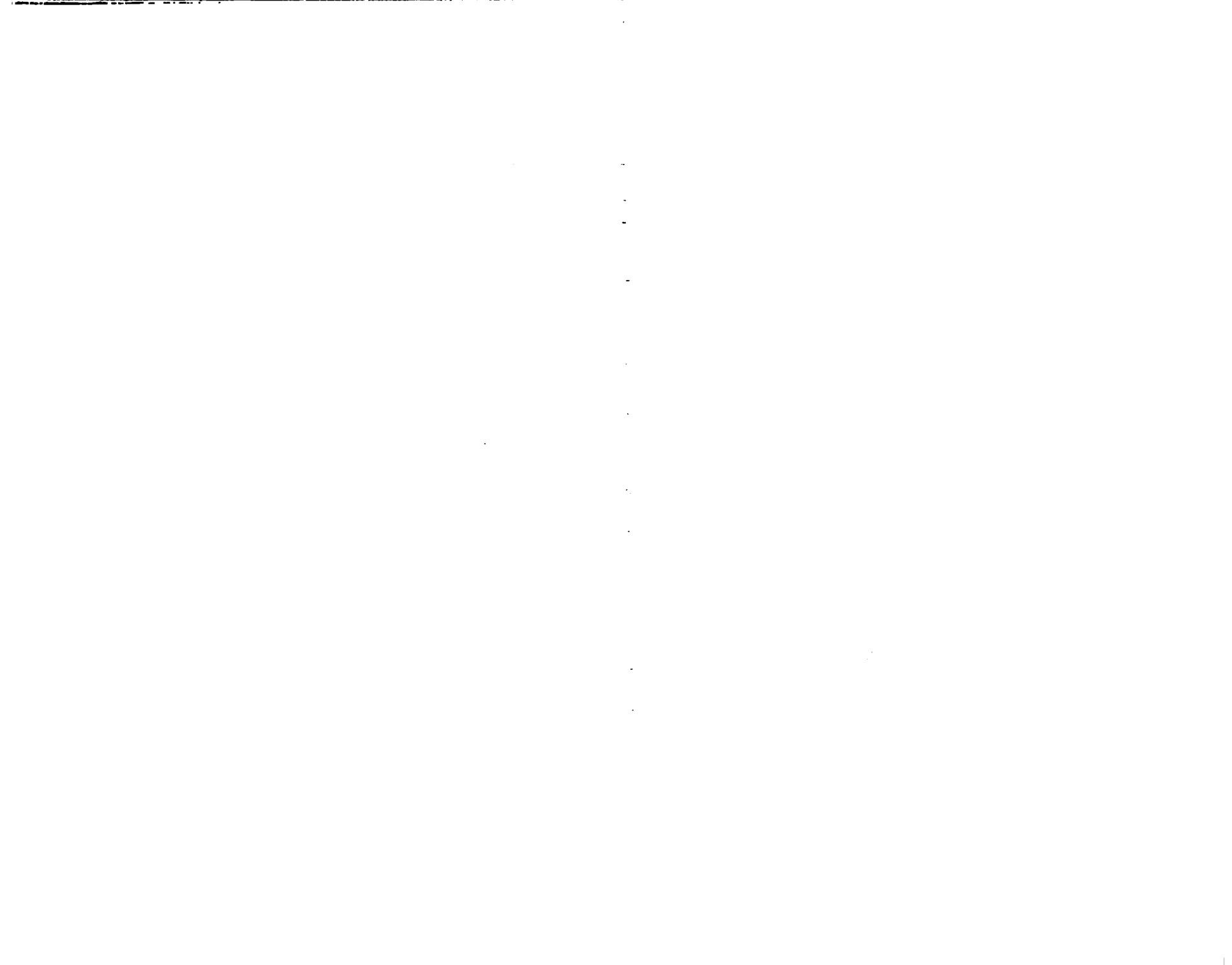


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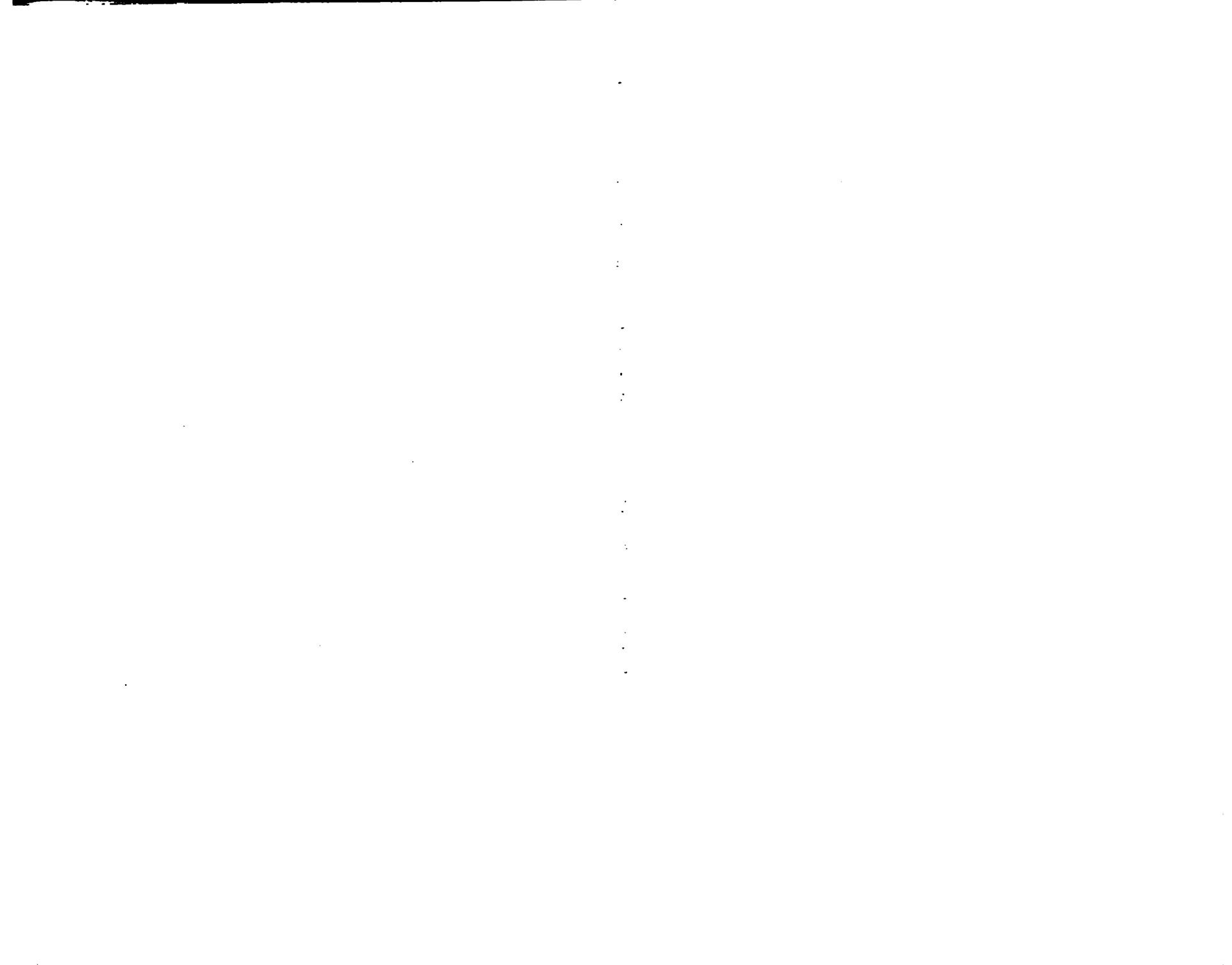
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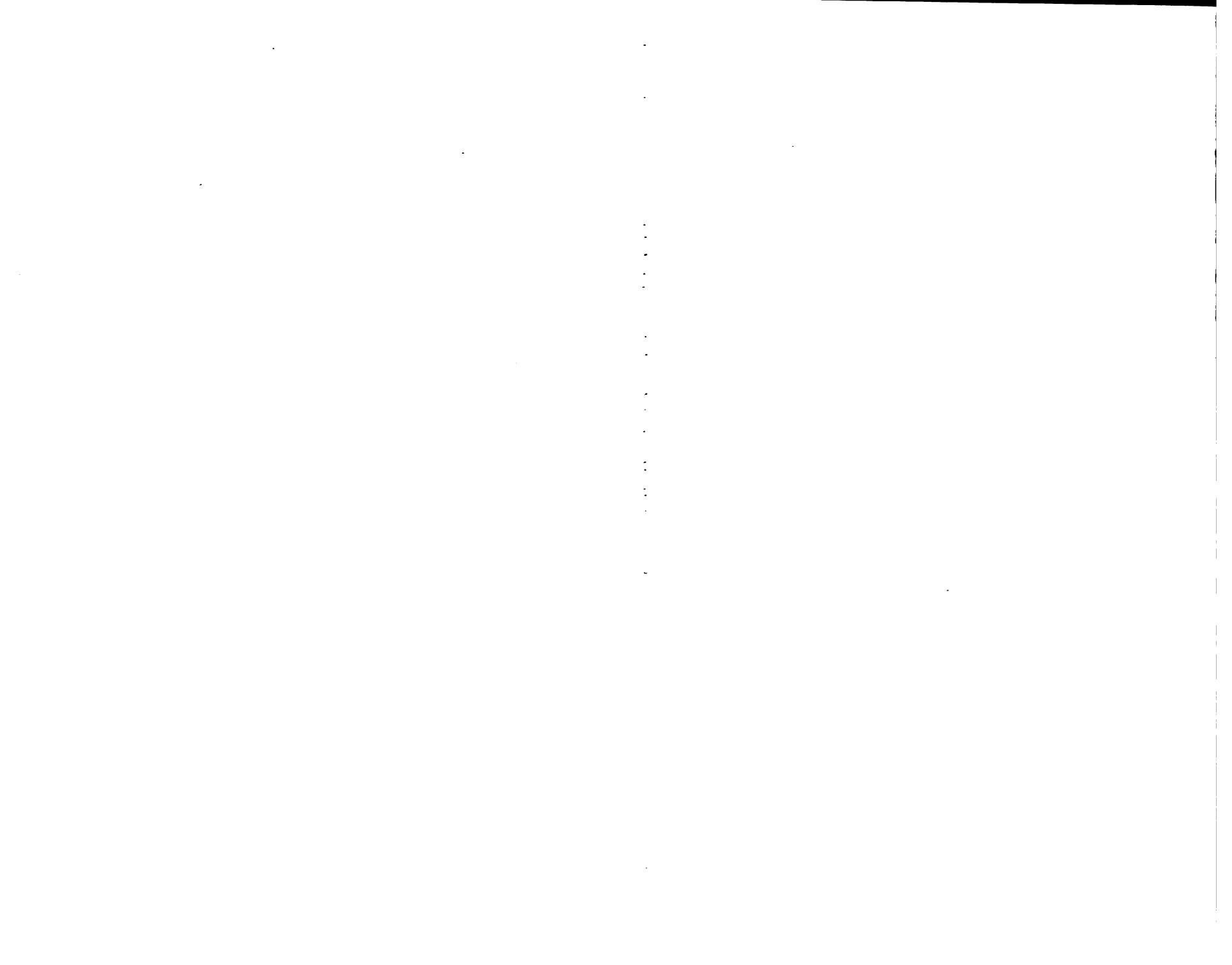
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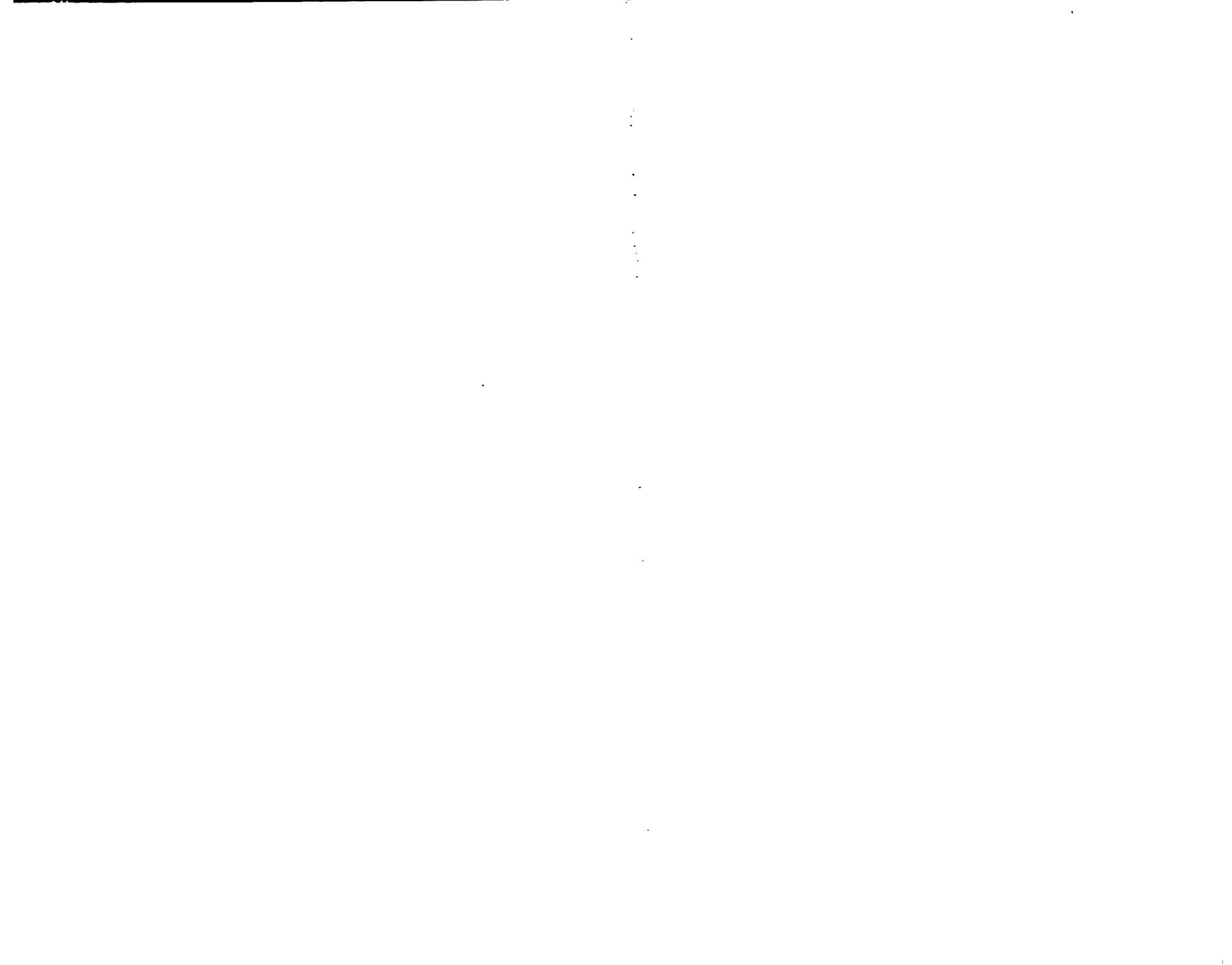
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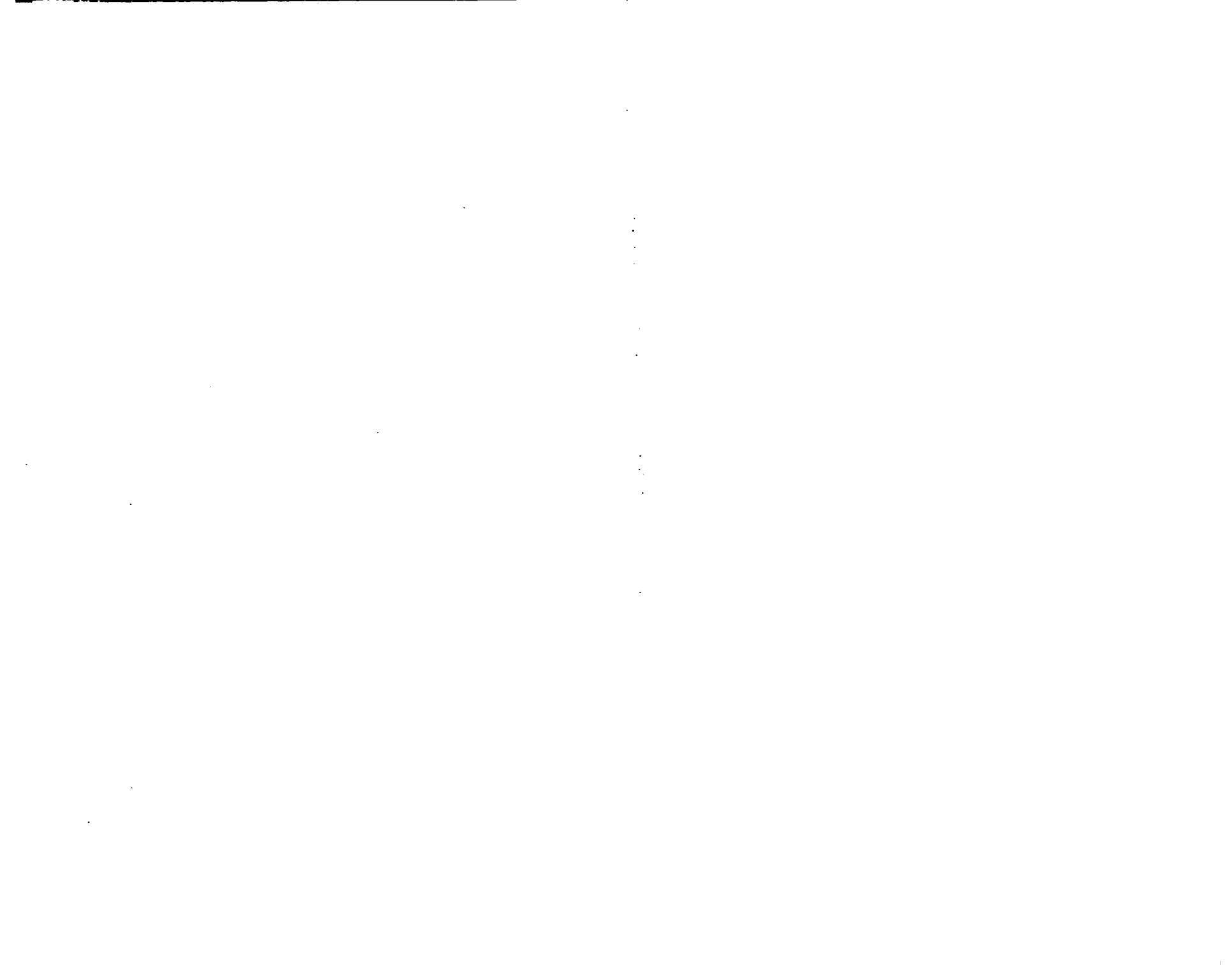
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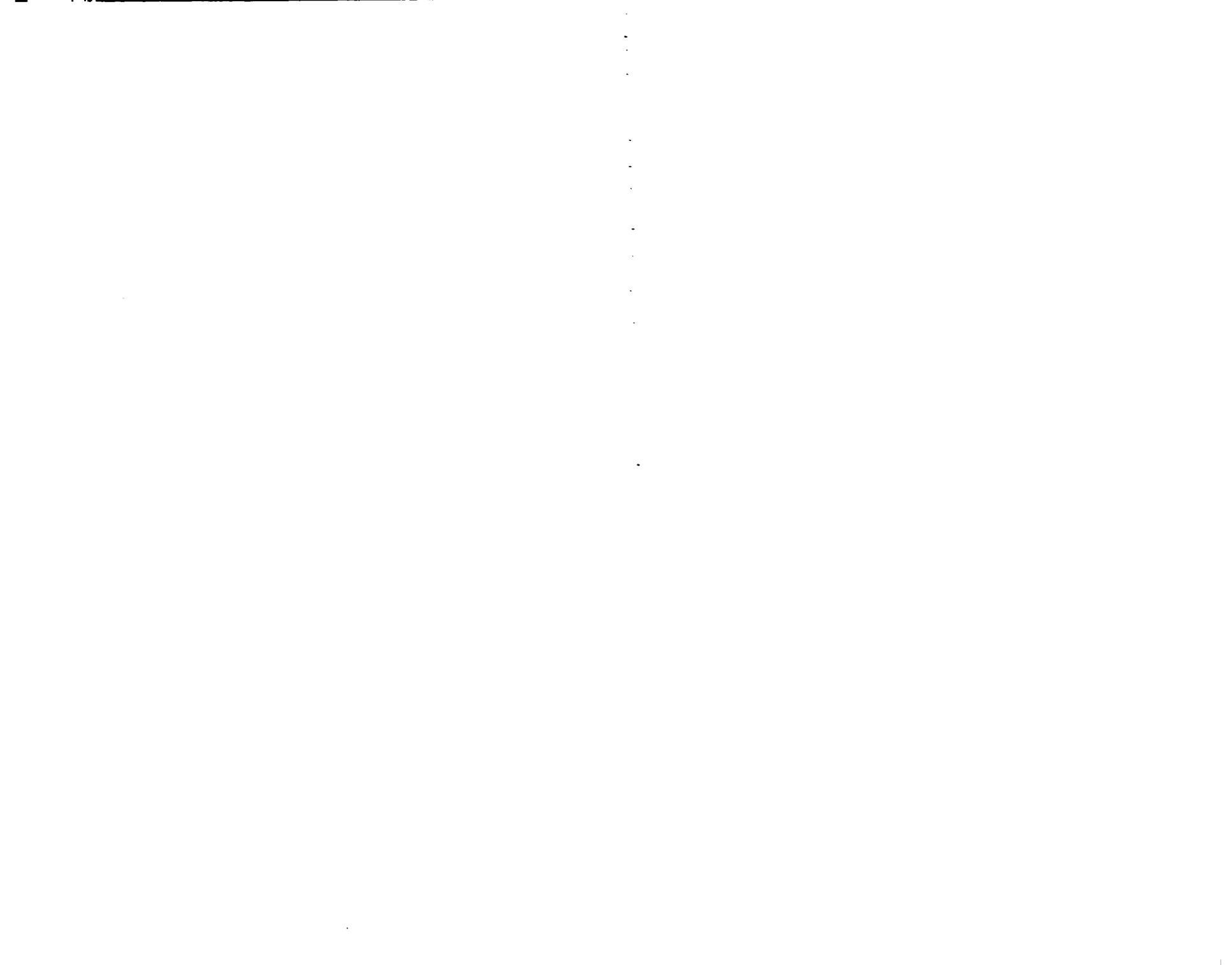
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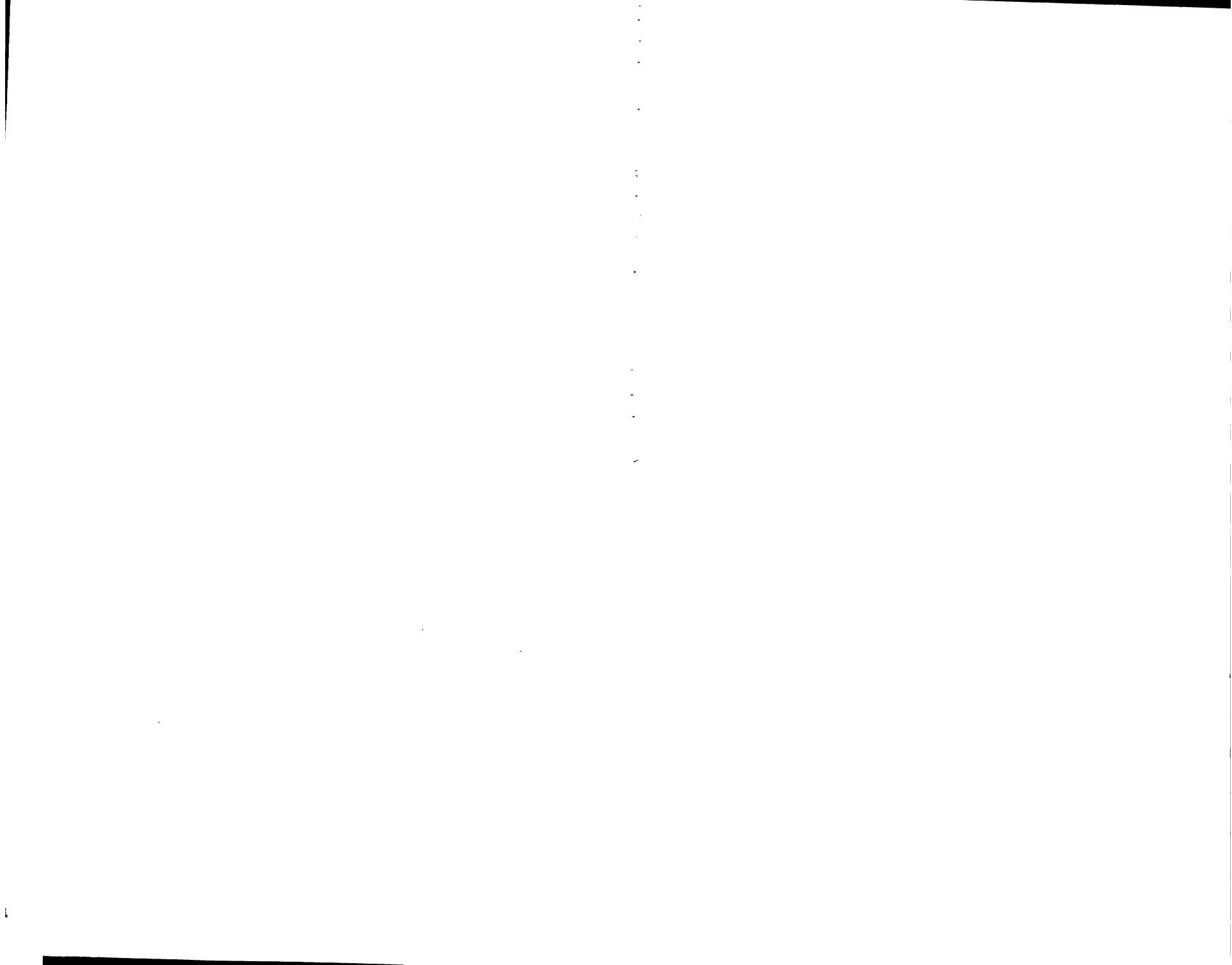
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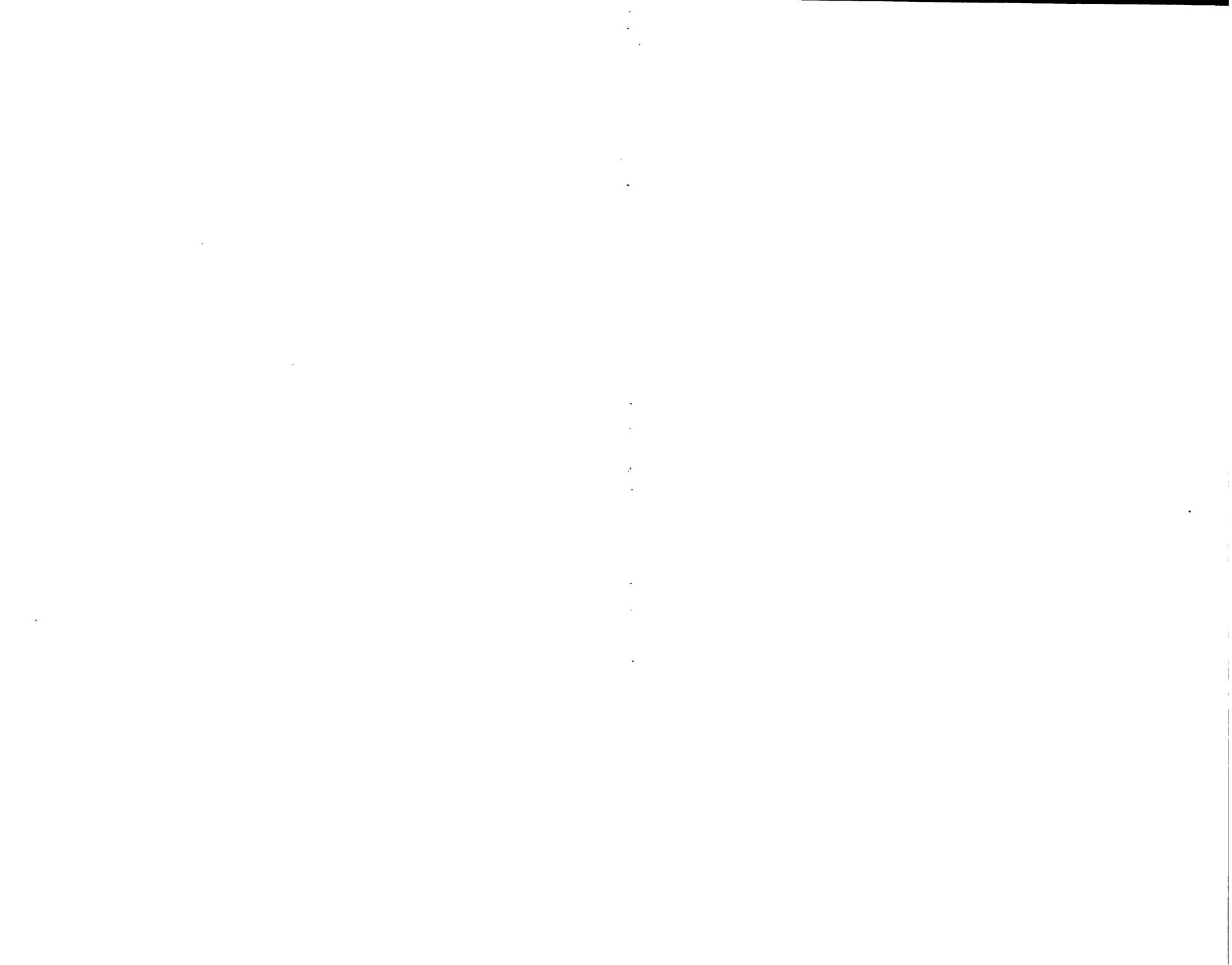
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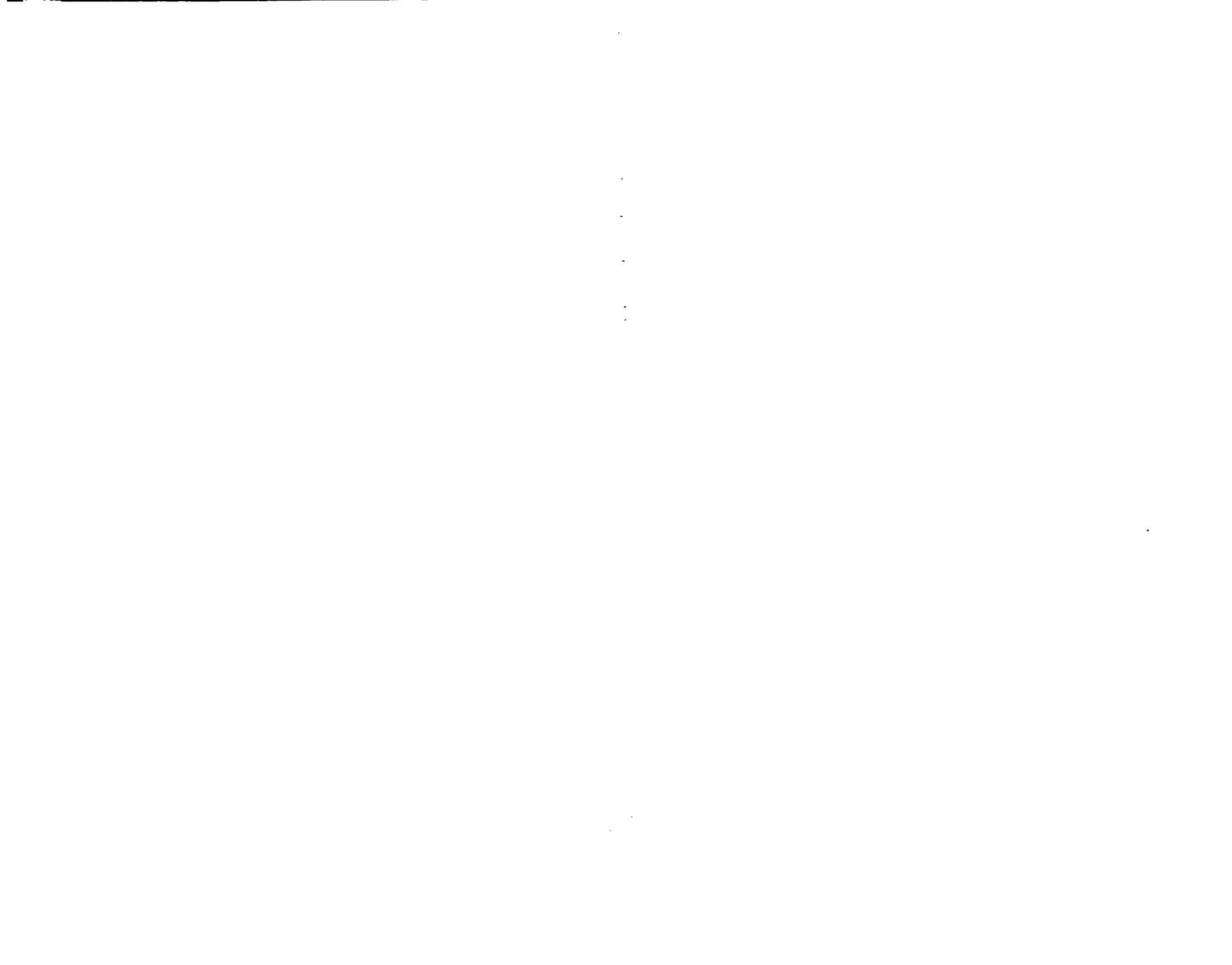
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